

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of:

Trademark Application Serial No.

Filed

For the Mark

Published in the Official Gazette

75/434,462

February 13, 1998

"BEAR DESIGN"

on July 13, 1999 at TM 77

04:00:00 PM 02/13/98

THE VERMONT TEDDY BEAR COMPANY,)
INC.,)

Opposer,)

v.)

BUILD-A-BEAR WORKSHOP, INC.,)

Applicant.)

Opposition No. 91115198

**OPPOSER'S RESPONSE TO APPLICANT'S MOTION
FOR SUMMARY JUDGMENT**

Opposer, The Vermont Teddy Bear Company, Inc. (VTB or Opposer) herewith responds to Applicant Build-A-Bear Workshop, Inc.'s (BABW or Applicant) Motion for Summary Judgment (Applicant's Motion or BABW's Motion).

I. INTRODUCTION

No later than May, 1996, Opposer conceived of its "MAKE A FRIEND FOR LIFE" (MAFFL) station for its factory store in Shelburne, Vermont and, shortly thereafter, on or about August 26, 1996, the station was up and running. The most important aspect of that station involved the customer placing a heart into the chest of a stuffed teddy bear the customer was assembling at that station to bring the bear "to life." By August, 1996, Opposer had devised its MAFFL kit including instructions for placement of a heart within the chest of a stuffed teddy bear, and had begun mailing hundreds of thousands of catalogs throughout the United States bearing an advertisement of its MAFFL kits.

The earliest date Applicant can claim for its heart mark is February 13, 1998, the date of filing of its U.S. Trademark application, Serial No. 75/434,462. However, the facts demonstrate that Applicant's CEO claims to have come up with this idea on July 4, 1997 while attending a barbeque, and that when Applicant opened its first store in October, 1997, placement of a heart in the chest of a stuffed teddy bear during the assembly thereof was included in the services it rendered.

The facts also make clear that before Applicant's CEO left for the barbeque, she had already received Opposer's Holiday 1996 Catalog with its prominent advertising of placement of a heart within a stuffed teddy bear in Opposer's MAFFL kits and had seen that advertising, and that she had even purchased, received and examined a MAFFL kit from Opposer that included a heart and instructions to place it in the chest of a stuffed teddy bear. Thus, Applicant's appropriation of Opposer's Trademark, when its first store opened, constituted willful copying of Opposer's Trademark.

As explained in greater detail below, in order to demonstrate priority of rights to the heart mark, Opposer need only demonstrate use of the heart as a mark in intrastate commerce prior to February 13, 1998 or, at minimum, establish a factual dispute concerning these issues. As will be clear from the following discussion and arguments, there can be no doubt that Opposer adopted the heart mark and used it as a Trademark prior to February 13, 1998.

Applicant themselves considered Opposer's use of the heart to be Trademark use, as they stated in a letter sent to Opposer in October, 1998. As will be made clear hereinbelow, the use complained of by Applicant in their October, 1998 letter was and is identical to all uses of the heart in the bear mark by Opposer since its inception in 1996.

For these reasons, Applicant's Motion should be denied.

Additionally, for the reasons set forth below, Opposer requests that the Board grant Opposer judgment, *sua sponte*.¹

II. FACTUAL BACKGROUND

A. Response to Applicant's Statement of Undisputed Facts

On pages 3-4 of Applicant's Memorandum in Support of Motion for Summary Judgment (Applicant's Memo), Applicant lists 7 alleged undisputed facts. Using the same numbering system, Opposer responds as follows:

1. Opposer concedes that BABW filed United States Trademark application Serial No. 75/434,462 on February 13, 1998 (BABW's application).
2. Opposer concedes that BABW's application claims a 3-dimensional heart located inside a plush or stuffed toy animal.
3. Opposer concedes that Opposer filed a Notice of Opposition to BABW's application on August 12, 1999, asserting Section 2(d) of the Lanham Act as the basis for its opposition - claiming priority of Trademark rights based on prior use of a heart located inside a stuffed animal.
4. Opposer concedes that on August 12, 1999, Opposer filed Trademark application Serial No. 75/774,077 (Opposer's application) seeking coverage for a 3-dimensional heart located inside a stuffed animal, the identical mark for which Applicant seeks federal registration.
5. Opposer concedes that in connection with Opposer's application, Opposer submitted as specimens of its use of the heart claimed in Opposer's application:

¹At the time Applicant filed their Motion for Summary Judgment, Opposer was in the process of clarifying earlier discovery production and augmenting that production pursuant to further search of Opposer's records and contacts with former employees, all at the request of Applicant. Should the Board have any questions concerning any discovery-related issues that Applicant might raise in reply to this response, Opposer formally requests an Oral Hearing so that those questions may be addressed.

- a) Excerpts from a 1996 Holiday Catalog referring to “Make A Friend For Life” kits;
- b) A “blueprint” that was included in the “Make A Friend For Life” kits; and
- c) A sample heart.

6. While it is true that the USPTO refused registration of the mark claimed in Opposer’s application, as will be explained in greater detail hereinafter, this refusal was not final and did not foreclose the opportunity for Opposer to present substitute specimens that will satisfy the Examining Attorney and which demonstrate that the proposed mark does function as a Trademark and Service Mark. As such, Opposer disputes any inference Applicant takes from PTO proceedings that Opposer has not and is not using the heart in the bear as a Trademark and Service Mark.

7. Opposer disputes Applicant’s characterization of Opposer’s manners of use of Opposer’s heart mark. In this regard, Opposer points out, here, that Opposer does not claim use of a brass heart as a pendant worn on a necklace about the neck of a stuffed teddy bear as Opposer’s mark as is asserted in Applicant’s Memo. Thus, of the four bullet points on page 4 of Applicant’s Memo, the first two are incorrect since they refer to locating the heart as a pendant hanging from the neck of a teddy bear. Concerning the third bullet point, Opposer only claims as its Trademark placement of the heart inside the stuffed animal. Concerning the fourth bullet point, contrary to Applicant’s allegation and to clarify any misperception Applicant may have, placement of the heart in the chest of a stuffed teddy bear has always been an important feature or aspect of assembly of a teddy bear at the MAFFL station at VTB’s factory store. Concerning MAFFL kits, all of the kits sold by Opposer include the blueprint instructions identified by Bates No. VTB 00026 (See Exhibit 1) and none of those kits included any kind of necklace that could have been used around the neck of the teddy bear when assembled. See Burns Dec. at 14, and Robert Dec. at 9. While Exhibit 9 attached to Applicant’s Memo depicts an advertisement of a MAFFL kit including the instruction to “carefully place the brass heart around your bear’s neck,” VTB never made any sales of such product. This advertising was short-lived and quickly modified to make clear that the kits were sold

with instructions to place the heart within the bear's chest. Without doubt, the feature of placing a heart into the chest of a stuffed teddy bear during the assembly thereof has been an essential feature of the MAFFL station at VTB's factory store from 1996 to date, and of the MAFFL kits sold beginning in 1996. See Burns Dec. at 15, and Robert Dec. at 15.

**B. Facts Establishing Opposer's Continuous Use of the Mark at Issue
From its Date of First Use to the Present Time**

1. Opposer conceived of the concept of placement of the heart in the chest of a stuffed teddy bear by May, 1996. See Burns Dec. at 7, Robert Dec. at 4-5, and Exh. 2 (document identified by Bates Nos. VTB 00021-25), with particular attention to numbered paragraph 10 of Exh. 2.

2. In August, 1996, VTB opened a station at its factory store in Shelburne, Vermont, where customers could assemble a stuffed teddy bear including the step of placement of a heart in the chest of a bear which Opposer claims as its Trademark and Service Mark and which VTB adopted and first claimed as its mark when that station opened. See Burns Dec. at 6-7, Robert Dec. at 6, and Exhibit 13. The concept of teddy bear assembly was described using the mark "MAKE A FRIEND FOR LIFE" (MAFFL).

3. By August, 1996, the MAFFL Trademark and Service Mark had been extended to MAFFL kits that could be purchased by VTB's customers so that they could assemble a teddy bear following the instructions set forth on a blueprint included in the MAFFL kit, which instructions included placement of the heart within the chest of the stuffed teddy bear, Opposer's mark. See Burns Dec. at 6 and 8, Robert Dec. at 7, Exh. 1 (copy of blueprint: Bates No. VTB 00026), and Exh. 13.

4. In September, 1996, Opposer began mailing Opposer's Holiday 1996 Catalog to hundreds of thousands of VTB customers throughout the United States. See Burns Dec. at 11, Robert Dec.

at 11, and Exh. 3 consisting of copies of pages evidencing creation and mailing of Holiday 1996 Catalog.

5. The Holiday 1996 Catalog had a full page advertisement on its back cover advertising MAFFL kits and prominently showing the step of placement of a heart within the bear. See Exh. 4 (from Applicant's discovery production), Bates Nos. BABW-VTB-383 and 430 (front and back covers of Holiday 1996 Catalog).

6. The MAFFL station in VTB's factory store has been in continuous use since its establishment in 1996 and to date, and during that entire period of time, the most important aspect of assembly of a teddy bear constitutes Opposer's Trademark and Service Mark, placement of a heart within the chest of the bear. See Burns Dec. at 15, Robert Dec. at 14, and Exh. 2, para. 10.

7. From July, 1996 to October, 1998, VTB provided a MAFFL station including, as an important Trademark and Service Mark step, placement of a heart within the chest of a stuffed teddy bear in their North Conway, New Hampshire store. See Robert Dec. at 15.

8. From August, 1997 to August, 1998, VTB provided a MAFFL station including, as an important Trademark and Service Mark step, placement of a heart within the chest of a stuffed teddy bear in their Freeport, Maine store. See Robert Dec. at 16.

9. From 1998 to November, 2000, Opposer licensed Zany Brainy the right to provide MAFFL stations and Zany Brainy did so in numerous stores in such locations as New Jersey, Maryland, Pennsylvania, Georgia, Alabama, North Carolina, Illinois, Minnesota and California, which stations permitted a customer to place a heart within the chest of a stuffed teddy bear, Opposer's Trademark and Service Mark. Opposer's licensee's use of its Trademark and Service Mark placement of the heart within the chest of a stuffed teddy bear was the same as it had been since the inception of these marks in 1996. Applicant themselves considered Opposer's licensee's use of its marks at Zany Brainy stores to be Trademark use as proven by the letter (see Exhibit 12)

dated October 27, 1998 from Applicant's Counsel to Opposer's licensee in which Applicant's Counsel stated the following:

"While our client has no objection to your company providing for the assembly and sale of teddy bears in your stores through Vermont Teddy Bear Company departments, it has become aware of certain practices instituted in these new departments which causes our client great concern as to appropriation of its trademarks and trade dress and other intellectual property. As we are certain you will appreciate from visiting with our client at its stores, our client has spent significant time and resources in developing its proprietary trade dress, trademarks, service marks, copyrights and other intellectual property in providing its goods and services.

Our client has become aware that you have adopted trade dress exclusive of our client, namely, the placement of a toy fabric 'heart' by the customer (or employees on behalf of the customer) inside a teddy bear prior to completion of the assembly process."

Also, see Robert Dec. at 17.

10. Since 1998, through the present, Opposer has prominently advertised, on its web site at WWW.VTBEAR.COM, its MAFFL services and the ability of its customers to visit its factory store and assemble and purchase a stuffed teddy bear including Opposer's Trademark and Service Mark placement of a heart inside the chest of the bear during assembly. See Robert Dec. at 19, and Exhibit 5 (print-out from Opposer's web site), Bates Nos. VTB 00091-93.

11. From August, 1996 through June, 1998, Opposer sold 6,969 MAFFL bears in its factory store and 1585 MAFFL kits. See Exhibit 16, and Robert Dec. at 12, 13.

III. STATEMENT OF THE LAW PERTINENT TO OPPOSER'S RESPONSE TO APPLICANT'S MOTION

In Applicant's Memo, Applicant properly stated the standard for summary judgment on pages 2-3 thereof, although additional aspects of the law concerning Motions for Summary Judgment are important for the Board to consider in deciding Applicant's Motion.

As a first matter, while the non-moving party (Opposer) is not required to present its entire case in response to a Motion for Summary Judgment, to defeat the Motion, the non-movant must

present sufficient evidence to show an evidentiary conflict as to the material fact in dispute with due consideration to the evidentiary burdens involved. *Opryland USA, Inc. v. Great American Music Show, Inc.*, 23 USPQ 2d 1471 (Fed. Cir. 1992).

All reasonable inferences and doubts drawn from the record must be resolved against the moving party (Applicant) and in favor of the responding party (Opposer). *Opryland*, 23 USPQ 2d at 1472-3, and *Colgate-Palmolive Co. v. S.C. Johnson & Son, Inc.*, 159 USPQ 56 (TTAB 1968).

In *McCarthy on Trademarks* § 20:132, where a claim is founded on Section 2(d) of the Lanham Act, intent is pertinent. The factual question of intent is “particularly unsuited to disposition on summary judgment.” *Copelands’ Enterprises, Inc. v. C.N.V., Inc.*, 20 USPQ 2d 1295, 1299 (Fed. Cir. 1991).

This Opposition proceeding concerns, mainly, the issue of priority of use under Section 2(d) of the Lanham Act. Proof of prior and continuous use in intrastate commerce by Opposer is sufficient to preclude registration of Applicant’s mark. *Odom Sausage Company v. Dorskocil Sausage, Inc.*, 169 USPQ 379 n.3 (TTAB 1971); *Corporate Document Services, Inc. v. I.C.E.D. Management, Inc.*, 48 USPQ 2d 1477 (TTAB 1998) (“It is well established that rights in and to a trademark are created by use of the mark in either intrastate or interstate commerce.”) See also *McCarthy on Trademarks* § 20:17.

Whether the prior use is in intra or interstate commerce, it is only necessary to prove priority of use in any one geographic area of the United States. *Plough, Inc. v. Great Southern Corp.*, 146 USPQ 592 (TTAB 1965).

In order to prevail in this Opposition, VTB must plead and prove that it has proprietary Trademark rights in its heart mark prior to the filing date of Applicant’s application for registration of its heart mark, namely, February 13, 1998. *Miller Brewing Company v. Anheiser Busch, Inc.*, 27

USPQ 2d 1711 (TTAB 1993) (citing Lanham Act Section 2(d) and *Zirco Corp. v. American Telephone & Telegraph Co.*, 21 USPQ 2d 1542 (TTAB 1991)).

These proprietary rights may arise from a prior registration, prior Trademark or Service Mark use, prior use as a trade name, prior use analogous to Trademark or Service Mark use, or any other use sufficient to establish proprietary rights. *Otto Roth & Co. v. Universal Foods Corp.*, 640 F.2d 1317, 1320, 209 USPQ 40, 43 (CCPA 1981).

An important issue that the Board must consider is whether Opposer's use of a heart in association with a stuffed teddy bear is merely ornamental in nature or, conversely, whether that use rises to the level of Trademark use. If customers perceive a design only as pleasing ornamentation, then the design is not a Trademark. If customers perceive a design as not only attractive but as an indicator of source, then it is a Trademark. The issue is not one of public policy against "aesthetic functionality," but one of public perception. *In re DC Comics, Inc.*, 215 USPQ 394 (CCPA 1982). See, also, *McCarthy on Trademarks* § 7:24. Since the line between mere ornamentation and ornamentation which is merely an incidental quality of a Trademark is not always clearly ascertainable, the application of legal principles to fit one situation or the other requires proper reflection upon the impression likely to govern the ordinary purchaser in the marketplace. For that reason, the merits of each case must be individually and accordingly adjudged. *In re Swift & Co.*, 106 USPQ 286 (CCPA 1955).

Sometimes, the fact that a third party has copied someone else's geometric shape or design can be strong evidence that the geometric shape or design so copied, in fact, consists of a Trademark. In *O & W Thum Co. v. Dickinson*, 245 F 609 (6th Cir. 1917), cert denied, 246 US 664, 62 LED 928, 38 S Ct. 334 (1918), the 6th Circuit Court of Appeals said the following:

"Why, out of the exhaustless variety of geometric shapes and of methods of grouping should the defendant Dickinson have adopted figures and groupings

substantially like those of plaintiff's mark? A purpose to appropriate a trademark in substantial part could scarcely be more manifest."

One way that Courts have determined whether an alleged mark rises to the level of Trademark significance or is merely ornamental involves analysis of the relative size of the alleged mark as compared to the size of the goods on which it is placed. As pointed out by *McCarthy on Trademarks* § 7:24, the Trademark Board held:

"that a word-design logo was used on T-shirts in such a way as to be merely aesthetic ornamentation, 'not likely to be perceived as anything other than part of the thematic whole of the ornamentation of applicant's shirts.' The Board noted that size, location, dominance and significance of the logo are all factors to be weighed."

See also *In re Astro-Gods, Inc.*, 223 USPQ 621 (TTAB 1984).

To summarize, in order to defeat Applicant's Motion for Summary Judgment, Opposer must demonstrate that there is an issue of fact concerning the elements that Applicant is required to prove to defeat Opposer's claim of superior rights in the heart mark. Those factors are two in number:

(1) Whether Opposer used its heart in the bear mark prior to the filing date of Applicant's application, namely, February 13, 1998; and

(2) Whether Opposer established use of the heart as a Trademark prior to February 13, 1998.

IV. ARGUMENT

A. Rebuttal of Applicant's Allegations Concerning the Prosecution History of Opposer's Application for Registration of the Heart Mark

In Applicant's Memo, Applicant has attempted to convince the Board that Opposer's application for registration was refused three times on the ground of lack of Trademark use, and that, accordingly, the Board should consider the prosecution file history as some credible evidence that Opposer's use of its heart mark is merely ornamental, not rising to the level of Trademark use. For the reasons set forth below, Applicant's arguments are not credible.

With reference to Exhibit 6, the file history from Opposer's application for registration of its heart in the bear mark, Opposer's application for registration of its heart mark was filed on August 12, 1999. On January 6, 2000, a first Office Action was issued in which the Examining Attorney alleged that Opposer's mark "fails to function as a trademark nor as a service mark." In addition, the Examining Attorney refused registration on the ground that, allegedly, a likelihood of confusion existed between Opposer's proposed mark and the marks identified in U.S. Registration Nos. 1,744,649 and 1,975,529. Copies of those registrations with status print-outs are attached hereto as Exhibits 7 and 8, respectively.

The mark in Registration No. 1,744,649 consists of, quoting the registration certificate, "a faceted faced object simulating a gemstone placed in the navel of a troll doll." The status print-out from the Patent and Trademark Office web site indicates cancellation of Registration No. 1,744,649 under Section 8 of the Lanham Act since the registrant failed to file for 10 year renewal of the registration.

With reference to Exhibit 8, Registration No. 1,975,529 covered, quoting from the certificate of registration, "a heart positioned on the lower front portion of the doll's dress." In a similar way to the way that Registration No. 1,744,649 was canceled, Registration No. 1,975,529 was also canceled under Section 8 of the Lanham Act since the registrant failed to file a Section 8 affidavit between the fifth and sixth years after the date of registration.

Thus, the only two registrations asserted by the Examining Attorney against Opposer's application no longer stand in the way of registration of Opposer's mark.

When Opposer's Counsel received the Office Action of January 6, 2000, Opposer's Counsel noticed that the Examining Attorney had inadvertently failed to cite Applicant's application in the Office Action. Opposer's Attorney promptly telephoned the Examining Attorney to inform her of this fact. Thus, six days later, on January 12, 2000, the Examining Attorney mailed a second Office

Action (see Exhibit 6) without Opposer having responded, in any way, to the first Office Action, with the second Office Action incorporating all of the refusals set forth in the first Office Action by reference and merely adding information concerning Applicant's application.² After receiving the second Office Action, Opposer filed a response on July 7, 2000 (see Exhibit 6), in which Opposer made good faith arguments defending the specimens that were originally presented with the application as was Opposer's right to do. Opposer's response pointed out that Opposer's mark was identical in all respects to Applicant's mark and that since Applicant's mark had been passed to publication for opposition, Opposer's mark should be passed to publication for opposition as well.

In Opposer's response, Opposer stated the following:

"Given the prosecution history of the Build-A-Bear application and in light of the remarks set forth hereinabove, it is respectfully requested that the Examining Attorney withdraw all grounds of refusal and suspend further prosecution in this application pending the outcome of the opposition proceeding filed by Applicant herein seeking to prevent registration of the Build-A-Bear application. At such time as the opposition proceeding is resolved, if such resolution is in Applicant's favor, substitute specimens will be presented."

As such, suspension of Opposer's application was granted at the request of Opposer pending the outcome of the Opposition proceeding. In fact, Opposer clearly indicated that once the Opposition is decided in Opposer's favor, "substitute specimens will be presented."

In Opposer's response, Opposer made a good faith effort to rebut the positions taken by the Examining Attorney in the first two Office Actions including arguing that the specimens originally presented were suitable evidence of Trademark use. The Examining Attorney, in response, sent out a third Office Action titled "Notice of Suspension." In the Notice of Suspension, the Examining Attorney rebutted Opposer's arguments, but did not make the Office Action final. In fact, the Examining Attorney specifically ruled that action on Opposer's application was suspended "pending

²This second Office Action is one of the three refusals referred to by Applicant.

the disposition of application Serial No. 75-434462.” Opposer had submitted in response to the first two Office Actions, a sample of the heart that is placed inside the teddy bear during its manufacture. The Examining Attorney stated the following in this regard, “This specimen was never received by the Office.” Then, the Examining Attorney stated the following:

“The applicant should note that the heart specimen would not be acceptable as evidence of actual trademark use for the goods in International Class 28, because they would not show the proposed mark as it is used on the ‘plush animals and stuffed toy animals.’ Furthermore, they would not show the proposed mark as functioning as a trademark. It would neither identify nor distinguish the goods of the applicant from those of others nor indicate their source.”

In this regard, the photographs attached to the Robert Declaration, which are Exhibit 10 hereto, and identified in paragraph 19 of that Declaration, comply with each of the requirements set forth by the Examining Attorney for a specimen to properly show Trademark use. They show the heart in the chest of a stuffed teddy bear. Additionally, the photographs show that the stuffed teddy bear has a label clearly identifying the source of the goods as Opposer. Once suspension of the prosecution of Opposer’s application is lifted, specimens corresponding to the photographs attached to the Robert Declaration will be submitted³ and Opposer expects that they will be accepted as evidence of proper Trademark use.

Thus, Applicant’s contention that the Board should give credence to the Examining Attorney’s non-final refusal to register Opposer’s mark under circumstances where Opposer would clearly have an opportunity to present substitute specimens and arguments in favor of registration is inappropriate.

³in conjunction with a declaration declaring that the specimens were in use in interstate commerce at least as early as the filing date of Opposer’s application

B. Opposer's Use of the Heart Mark was Clearly Prior to that of Applicant

As explained above, all Opposer need do, to defeat Applicant's Motion, is to demonstrate issues of fact concerning Opposer's prior use of the mark in question prior to the filing date of Applicant's application, namely, February 13, 1998, and to demonstrate that there are issues of fact concerning whether Opposer's use of the mark rises to the level of Trademark use. Concerning the first issue, the facts are clear and unequivocal:

(1) Opposer came up with the idea of providing a stuffed teddy bear with a heart placed in its chest by no later than May, 1996. See Burns Dec. at 5 and 7, and Exhibit 2, para. 10.

(2) In short order, in August, 1996, Opposer had created a MAFFL station at its factory store in Shelburne, Vermont, where customers could place the heart in the chest of a stuffed teddy bear, Opposer's Trademark and Service Mark, before closing the chest. See Burns Dec. at 6, and Robert Dec. at 6, and Exh. 13, MAKE A FRIEND FOR LIFE Registration. The bears have a hang tag and a label stating "Friend for Life" and a label identifying Opposer as their source. See Exhibit 10, photographs of stuffed teddy bear assembled at Opposer's MAFFL station.

(3) In September, 1996, Opposer began offering for sale in its Holiday 1996 Catalog a MAFFL kit, including a heart and instructions to place the heart inside the chest of a teddy bear, Opposer's Trademark and Service Mark. See Burns Dec. at 11, Exhibit 3, and Robert Dec. at 7, 11.

(4) Customers were aware that the VTB factory store was the place to go to assemble a stuffed teddy bear including placing a heart within the chest of the bear. See Burns Dec. at 10.

(5) Opposer's use of the heart in the bear was considered by Opposer to be the most important step in assembly of the bear because it brought the bear "to life." See Burns Dec. at 9, Robert Dec. at 5, and Exh. 2, para. 10.

C. Prior to Applicant's Filing Date, Opposer Used the Heart as a Trademark

While Applicant can only claim priority going back to Applicant's date of filing of their application, February 13, 1998, the circumstances involved in Applicant's adoption of the heart in the bear mark and initial use have a clear bearing, in this case, on whether Opposer's use of the heart in the bear is Trademark use. According to Applicant's CEO, Maxine Clark, Ms. Clark came up with use of the heart in the chest of a teddy bear on July 4, 1997, while attending a barbeque. See Exhibit 9, Clark Depo. at 22:14 - 23:1. According to Ms. Clark, when the first Build-A-Bear Workshop store opened in St. Louis on October 26, 1997, one feature involved in the assembly of stuffed teddy bears was placement of the heart in the chest of the bear. See Clark Depo. at 13:1-18.

However, Ms. Clark admitted under oath that she had received Opposer's Holiday 1996 Catalog prior to the July 4, 1997 barbeque. See Clark Depo. at 30:1-3. In fact, Ms. Clark identified the page of Opposer's Holiday 1996 Catalog on which the MAFFL kit advertisement appeared. See Clark Depo. at 28:12 - 29:25. That page also bears the address of Ms. Clark. See Clark Depo. at 28:12-19, and Exhibit 4.

Furthermore, Ms. Clark admitted having ordered a MAFFL kit from Opposer's Holiday 1996 Catalog. See Clark Depo. at 30:15-21. Ms. Clark also admitted having received and examined the MAFFL kit prior to the July 4, 1996 barbeque. See Clark Depo. at 30:22-24. Applicant's copying of Opposer's Trademark and Service Mark use of a heart in the bear is clear evidence that Opposer's use of the heart is Trademark use. After all, why out of the exhaustless variety of geometric figures and of methods of grouping should Applicant have adopted Opposer's heart as Applicant's own? A purpose to appropriate a Trademark in substantial part could scarcely be more manifest. *O. & W. Thum, Co. v. Dickinson*, 245 F 609, 614 (6th Cir. 1917). See also *McCarthy on Trademarks* § 7:34.

D. Opposer's Use of the Heart in the Stuffed Teddy Bear Goes Well Beyond Mere Ornamental or Decorative Use

In Applicant's Memo, Applicant cites § 1202.03 of the Trademark Manual of Examining Procedure (TMEP) as supporting Applicant's contention that Opposer's use of the heart in the teddy bear consists of mere ornamentation, not functioning as a Trademark. In fact, § 1202.03 of the TMEP sets forth four different categories of ornamental matter "along a continuum ranging from ornamental matter that is registrable on the Principal Register, to purely ornamental matter that is incapable of trademark significance and unregistrable under any circumstances." Those four categories are described on page 1200-51 of the TMEP as follows:

- "(1) Ornamental matter that serves as an identifier of a 'secondary source' is considered an arbitrary symbol and is registrable on the Principal Register. For example, ornamental matter on a T-shirt (e.g., the designation 'NEW YORK UNIVERSITY') can convey to the purchasing public the 'secondary source' of the T-shirt (rather than the manufacturing source). Thus, even where the T-shirt is distributed by a party other than that identified by the designation, sponsorship or authorization by the identified party is indicated. See TMEP § 1202.03(c).
- (2) Ornamental matter that is neither inherently distinctive nor a secondary source indicator may be registered on the Principal Register under §2(f) if the applicant establishes that the subject matter has acquired distinctiveness as a mark in relation to the goods. See TMEP § 1202.03(d).
- (3) Ornamental matter that is neither inherently distinctive nor an indicator of secondary source, and has not acquired distinctiveness, but is capable of attaining trademark significance, may be registered on the Supplemental Register.
- (4) Some matter is determined to be purely ornamental and thus incapable of trademark significance and unregistrable on either the Principal Register or the Supplemental Register. See TMEP § 1202.03(a)."

In instructing Examining Attorneys how to examine applications for registration of decorative features, Examining Attorneys are asked to consider the following factors:

- (1) The commercial impression of the proposed mark;
- (2) The relevant practices of the trade;
- (3) Secondary source, if applicable; and
- (4) Evidence of distinctiveness.

In § 1202.03(a) of the TMEP, Examining Attorneys are asked to consider “the size, location and dominance of the proposed mark, as applied to the goods, to determine whether ornamental matter serves a trademark function.” *In re Dimitri’s Inc.*, 9 USPQ 2d 1666, 1667 (TTAB 1988); *In re Astro-Gods, Inc.*, 223 USPQ 621, 623 (TTAB 1984). As stated in that section:

“A small, neat and discrete word or design feature (e.g., small design of animal over pocket or breast portion of shirt) may be likely to create the commercial impression of a trademark whereas a larger rendition of the same matter emblazoned across the front of a garment (or a tote bag, or the like) may be likely to be perceived merely as a decorative or ornamental feature of the goods. However, a small, neat and discrete word or design feature will not necessarily be perceived as a mark in all cases.”

Opposer’s use of the heart rises well beyond the level of mere ornamentation. Opposer’s consistent use of the heart mark involves placement of a small heart (see Exhibit 10) inside the chest of a stuffed teddy bear during the assembly thereof, either at a retail establishment or by the purchaser through following the instructions provided in a kit purchased by the customer. Placement of the heart inside the chest of the teddy bear provides a clever, unique, imaginative and distinct impression in the minds of consumers that associates that mark with its source, Opposer, whose identity is found on a label affixed to the bear. Applicant’s allegation that it considers Opposer’s use of the heart in the bear mark to be ornamental is disingenuous, given Applicant’s letter to Zany Brainy, Exhibit 12, and the fact that the heart in the bear mark was used identically at Zany Brainy stores to its manner of use by Opposer from 1996 to date. See Robert Dec. at 17.

For the reasons set forth in paragraph E below, Opposer’s Trademark and Service Mark are inherently distinctive and not ornamental.

E. Applicant’s Allegation that Opposer’s Use of the Heart in the Bear Mark is not Trademark Use is Nonsensical

A copy of the file history from Applicant’s pending Trademark application Serial No. 75/434,462 is attached hereto as Exhibit 11. In that file history, in response to the filing of the

Office Action, the Examining Attorney only objected to the recitation of services as allegedly being indefinite. The Examining Attorney suggested adopting the following recitation if accurate:

“Retail store services featuring plush toy animals, stuffed toy animals and accessories therefor.”

That Office Action was dated September 15, 1998.

In response to that Office Action, on January 6, 1999, Applicant responded amending the identification of goods and recitation of services to read as follows:

“plush animals and stuffed toy animals in International Class 28; and retail store services featuring plush toy animals, stuffed toy animals, and accessories therefor in International Class 35.”

In response to the filing of that response, a Notice of Publication under Section 12(a) was mailed on June 11, 1999.

As such, it is clear that during the prosecution of Applicant’s application to register its heart in the bear mark, no requirement was made to prove the distinctiveness of the mark under Section 2(f) of the Lanham Act, 15 U.S.C. § 1052(f). As such, issuance of the Notice of Publication constituted a decision by the Patent and Trademark Office that Applicant’s mark as applied to the goods as set forth in their application was inherently distinctive.⁴

Opposer’s mark is identical in all respects to Applicant’s mark. This should not be surprising because Applicant knowingly copied Opposer’s mark. The facts, in this regard, are clear and unequivocal as follows:

(1) Opposer first began using its heart in the bear mark in August, 1996. See Robert Dec. at 6, and Burns Dec. at 6.

⁴Presumably, in reaching that conclusion, the Examining Attorney considered the requirements of TMEP § 1202.03 discussed in Section IV D above.

(2) Opposer had conceived of the heart in the bear mark no later than May, 1996. See Exhibit 2.

(3) Beginning in September, 1996, Opposer began shipping hundreds of thousands of catalogs including an advertisement depicting Opposer's MAFFL kits which included as the essential step thereof Opposer's mark consisting of placement of a heart in the chest of a stuffed teddy bear. See Exhibits 3 and 4.

(4) Applicant's CEO, Ms. Maxine Clark, admitted under oath that she received Opposer's catalog with its advertisement of its MAFFL kit prior to the filing date of Applicant's application. See Exhibit 9 Clark Depo. at 30:1-3, and 28:12 - 29:25.

(5) Ms. Clark also admitted ordering a MAFFL kit from Opposer through the catalog, receiving it and examining it, with all of these acts occurring prior to the date of filing of Applicant's application. See Clark Depo at 30:15-24.

(6) When Ms. Clark signed the Declaration at the end of Applicant's application (see Exhibit 11), on February 10, 1998, it was with full knowledge that Opposer had been using the very same mark for a significant period of time earlier.

Applicant argues that the Board should rule Opposer's use of its mark to be merely ornamental solely based upon the specimens Opposer submitted to the Patent and Trademark Office in support of its application to register its mark. Clearly from the file history of Opposer's application, the issue of substitute specimens has not been foreclosed. In fact, on the record, Opposer clearly indicated to the Examining Attorney that at the conclusion of this Opposition proceeding, substitute specimens will be presented. The photographs (Exhibit 10) attached to the Robert Declaration are representative of substitute specimens that will be presented to the Examining Attorney once the Opposition proceeding is satisfactorily resolved.

For these reasons, Applicant's contention that Opposer's mark, which Applicant copied, should be considered merely ornamental and not rising to the level of Trademark significance is nonsensical. The ruling of the Trademark Examiner that Applicant's mark is inherently distinctive is equally applicable to the mark Applicant directly copied, that of Opposer.

F. Applicant's Reliance Upon *Wiley v. American Greetings Corp.* is not Well Placed

On page 13 of Applicant's Memo, Applicant relies upon the *Wiley* case, stating the following:

"The United States Court of Appeals for the first Circuit found a similar use of a heart to be merely ornamental. *Wiley v. American Greetings Corp.*, 226 USPQ 101 (1st Cir. 1985). In fact, the first Circuit entered summary judgment in that case on the basis that the use of a heart at issue - a heart used on the outside of a bear - was ornamental. *Id.* Similarly, BABW is entitled to summary judgment because VTB has only shown an ornamental use of the heart, not trademark use."

Review of the *Wiley* case reveals that there are numerous reasons why that case is not analogous with the situation that is before the Board in this case. First, Opposer's use of the heart is not on the outside of the stuffed teddy bear as claimed by Applicant. Rather, that use is inside the chest of the teddy bear where the heart is placed by the customer before the chest of the teddy bear is closed. Thus, Opposer's use of the heart is not merely a decoration on the body of the teddy bear as confronted the 1st Circuit in *Wiley*. In this regard, reference is made to the description of use of the heart that was set forth by the District Court in the underlying case *Wiley v. American Greetings Corp.*, 224 USPQ 876 (DMass.1984):

"Each of Wiley Creation's Bears features a large red heart sewn on its left breast."

Second, with further reference to the District Court case, the record of which was that which was reviewed by the 1st Circuit on Appeal, other important differences are evident. First, the record showed that:

“A similar red heart-shaped design also appears on plaintiff’s business cards and teddy bear merchandising tags. Apart from the cards and tags, however, plaintiff has not engaged in any advertising.” *Id.*

By contrast, Opposer herein sent out virtually 1 million catalogs throughout the United States advertising its MAFFL kits prior to the filing date of Applicant’s application, February 13, 1998.

See Robert Dec. at 11.

Third, as the District Court stated:

“Where, as here, the plaintiff has not attempted to register the disputed mark with either the United States Patent Office or any appropriate State office, the mark and its use must satisfy the strictures of the common law.”

By contrast, in this case, Opposer has applied with the U.S. Patent and Trademark Office to federally register its Trademark rights. 224 USPQ at 877.

Fourth, the Court found that:

“In light of the longstanding use of the heart motif as a decoration upon all manner of goods, I find the placement of a heart upon the left breast of the Wiley Bear is not inherently distinctive.” (Emphasis added).

By contrast, Opposer’s use of the heart is not “upon” a stuffed teddy bear. Rather, it is within the chest of the bear. Opposer respectfully submits to the Board that there is no evidence in the record of this Opposition proceeding of any third party consistently using the concept of placement of a heart within the chest of a teddy bear as a Trademark. Thus, the findings of the District Court in *Wiley* and of the 1st Circuit affirming that decision are not inconsistent with the Board’s ability to rule that Opposer’s use of a heart placed in the chest of a stuffed teddy bear is inherently distinctive, as the Trademark Examining Attorney decided in Applicant’s application. .

Similarly, the 1st Circuit stated the following:

“Using a red heart as ornamentation for stuffed animals is also far from unique or unusual. The record contains pictures of, and references to, an abundance of plush animals, including many teddy bears, that sport heart designs on their chests or other parts of their anatomy.” 762 F.2d at 142. (Emphasis added).

The record is equally clear that there is no evidence of any third parties consistently using as a Trademark placement of a heart within the chest of a teddy bear during assembly. It is submitted that this procedure is highly distinct from merely sewing a heart on the chest or outside another portion of the anatomy of a stuffed teddy bear or other stuffed animal.

G. The Board is Requested to Enter Judgment in Favor of Opposer

Although Opposer has not moved for Summary Judgment in this case, it is submitted that the evidence presented in association with Opposer's response to Applicant's Motion for Summary Judgment is sufficient for the Board to determine that Opposer has acquired Trademark rights in the placement of a heart inside the chest of a teddy bear earlier than Applicant's claim.

The following is stated in TBMP § 528.08:

"If the Board concludes, upon motion for summary judgment, that there is no genuine issue of material fact, but that it is the nonmoving party, rather than the moving party, which is entitled to judgment as a matter of law, the Board may, in appropriate cases, enter summary judgment *sua sponte* in favor of the nonmoving party (that is, enter summary judgment in favor of the nonmoving party even though there is no cross-motion for summary judgment)."

In this case, the record is abundantly clear and supports grant of summary judgment in favor of Opposer. Opposer notes the following:

(1) As between Opposer and Applicant, Opposer was clearly the first to use the heart placed in the chest of a stuffed teddy bear as a Trademark. In this regard, the following evidence is noted:

(a) Opposer's 1996 Holiday Catalog (see Exhibit 4), which the evidence shows (see Exhibit 3) was a printing of virtually 1 million catalogs mailed throughout the United States;

(b) Declaration of Robert Patrick Burns;

(c) Declaration of Elisabeth B. Robert;

(d) Photographs (Exhibit 10) depicting the manner of use of the Trademark since its inception;

(e) In addition, the evidence is clear that VTB opened a station in its factory store where customers have been placing hearts in teddy bears as part of the assembly process since no later than Summer 1996. The evidence shows (Robert Dec. at 12, 13 and Exhibit 16) that from 1996 through June 30, 1998, VTB sold 6,969 MAFFL bears at its factory store, each of which had a heart placed in its chest by a customer before closing the chest, and that 1,585 MAFFL kits were sold, each of which included a heart and instructions to place the heart in the chest of the bear before sewing it closed.

(2) The earliest date that Applicant can claim in this Opposition proceeding is the filing date of its application Serial No. 75/434,462, which was filed on February 13, 1998. Opposer's use goes back to August of 1996, 1 ½ years earlier.

On February 13, 1998, Applicant filed its application for registration of the Trademark consisting of a heart placed in the chest of a stuffed teddy bear. In the application as filed, Applicant described the mark as follows:

"The mark consists of a three dimensional heart shaped object, chosen by the purchaser of a stuffed or plush toy animal, and placed inside the stuffed or plush toy animal before it is stitched closed."

This is the identical mark that Opposer was using since no later than August of 1996 and continuously thereafter. The Declaration accompanying the application was signed by Applicant's CEO, Maxine Clark, on February 10, 1998. See Exhibit 11. The Declaration states the following:

"The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the application sought to be registered, or, if the application is being filed under 15 U.S.C. 1051(b), he/she believes the applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the above identified mark in commerce, either in the identical form or in such near resemblance thereto as may be likely, when applied to the goods and services of such other person, to cause confusion,

or to cause mistake, or to deceive; and all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.”

Thus, Ms. Clark as CEO of Applicant declared to the best of her knowledge and belief “no other person, firm, corporation, or association has the right to use the above identified mark in commerce, either in the identical form or in such near resemblance thereof as may be likely, when applied to the goods and services of such other person, to cause confusion, or to cause mistake, or to deceive.”

The facts that have developed during the course of this Opposition proceeding, including those developed during the Rule 56(f) Deposition of Ms. Clark on June 22, 2004, make it clear that at the time Ms. Clark signed that Declaration, she was aware of Opposer’s prior rights in and to the very same mark for which she denied knowledge of such earlier rights on the part of a third party in the signed Declaration. In this regard, Ms. Clark testified that she came up with her concept of placing a heart within the chest of a stuffed teddy bear on July 4, 1997. See Exhibit 9, Clark Depo. at 22:14 - 23:1. By that time, according to Ms. Clark’s testimony, she had already received Opposer’s Holiday 1996 Catalog with its advertisement of the MAFFL kit including the step of placing a heart within the chest of the stuffed teddy bear before the chest is sewn closed. See Clark Depo. at 30:15-24. Furthermore, according to Ms. Clark’s own testimony, before having attended a barbeque on July 4, 1997, where she claims to have come up with the heart in the bear concept, she had ordered and received from Opposer’s Holiday 1996 Catalog a MAFFL kit, and had examined it. See Clark Depo. at 30:15-24.

Thus, it is apparent that Applicant was fully aware that Opposer was using the same Trademark, but much earlier, yet decided to plunge ahead and attempt to appropriate Opposer’s Trademark rights with impunity.

In an outrageous display of brashness, on October 27, 1998, Applicant's Counsel sent a letter (Exhibit 12) to Opposer's licensee of a MAFFL station in numerous Zany Brainy stores, claiming prior rights in the heart in the bear mark and demanding that Zany Brainy cease and desist from infringing Applicant's Trademark. That letter was sent well after Applicant's own CEO, Ms. Maxine Clark, was fully aware that Opposer had been using the heart in the bear Trademark well before its use commenced by Applicant, namely, when it opened its first store on October 26, 1997. Applicant's allegation of Trademark infringement comprises compelling evidence that Opposer's licensee's use of the heart in the bear mark was Trademark use identical to that of Applicant. That manner of use is identical to Opposer's use of that mark since 1996 and to date. See Robert Dec. at 17.

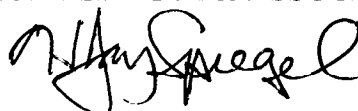
These clear and unequivocal facts established through documentary evidence including the transcript from Applicant's CEO's own testimony demonstrate Opposer's Trademark use of the heart in the bear mark earlier than that of Applicant.

V. CONCLUSION

Resolving all reasonable inferences and doubts against Applicant and in favor of Opposer, there can be no doubt that Opposer's use of the heart in the bear was Trademark use earlier in time than that of Applicant. Accordingly, Applicant's Motion should be denied. Additionally, for the reasons set forth above, Opposer requests that the Board enter judgment in favor of Opposer, *sua sponte*.

Respectfully submitted,

H. JAY SPIEGEL & ASSOCIATES, P.C.



By H. JAY SPIEGEL
Registration No. 30,722
Attorney for Opposer

H. JAY SPIEGEL & ASSOCIATES
P.O. Box 11
Mount Vernon, VA 22121
(703) 619-0101 - Phone
(703) 619-0101 - Facsimile

Step 1

Open the stuffing packet and divide it into four equal groups. These will be used to fill the arms, legs, head, and body. You'll want to start with the arms, then do the legs and the head. Hold off doing the body until after the pieces are attached to it. You may find the handle of a wooden spoon is useful for pushing the stuffing to the bottom of the arms and legs.

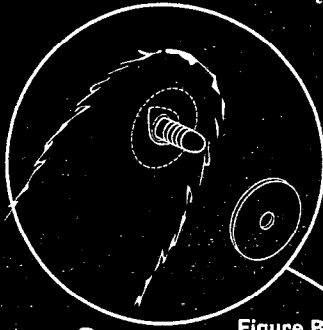


Figure B

Step 3**Attach the arms and legs to your Bear.**

Begin with the legs. Find the two small holes above and below the opening you used to stuff the leg. Place the joint peg inside the large opening with the peg sticking out. Next take the bottom small hole and place it over the peg, then take the top small hole and place it over the peg. Do this for the other leg and for both arms. (See figure B).

Finally place the body in front of you with the butt tag at the bottom facing you. Find the opening in the body to correspond with the appropriate limb, making sure the limb faces forward when the butt tag is in the back. Place the peg on the limb through the hole, then press the washer over the peg from the inside of the body. Be sure to push it down tightly. This is where the plumbers T comes in handy. Use it to push the washer on completely, but be careful, once the washer is on it is permanent, so be sure you have the appropriate hole for the limb. Repeat this process for all the limbs.

Step 2**Attach your Bear's head.**

If you look closely at the opening where you filled the head you will find it has three small holes near the opening you used to stuff it. Place the joint peg inside the large opening so the peg is sticking out, then place the two side small holes over the peg. Next place the back hole over the peg. The head attaches to the top of the body at the juncture of the seams. Place the peg through the hole and press a washer from the inside. The t-joint supplied is particularly useful for making sure the head is on tight. (See figure A).

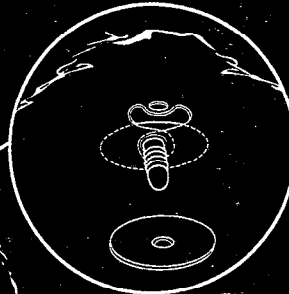


Figure A

Step 4**Stuff and seal your bear's body.**

Now that you have all the limbs and the head attached it's time to finish up. You'll need the remainder of the stuffing from step one. Fill the body of your bear to just the right firmness, making sure to fill around his neck and around all the arm and leg joints. In addition make sure you make his tummy jolly and round. When you're finished stuffing, it's time to place the heart in. Carefully place the heart exactly where you think it belongs.

Finally it's time to sew up his back. A nice zig-zag stitch will work wonderfully. (See figure C)

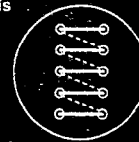


Figure C

Step 5**Congratulations! You've made a friend for life.**

Be sure to fill out your bear's birth certificate with the exact time of that last stitch, because that's the time of his birth. Now it's time to make friends with your bear. So first of all introduce yourself. Then you two can begin all your adventures.

Tools You'll Need:

A Wooden Spoon

A Large Sewing Needle

Contents of Kit:

(1) Furry Head	(5) Joint Pins <small>(they look like big thumb tacks)</small>
(1) Furry Body	(5) Washers
(2) Furry Arms	(1) Plumbers T
(2) Furry Legs	(1) Bag of Stuffing
(1) Brass Heart	Heavy Nylon Thread

Scale = N.T.S.

09/06/1996

Drawn By: Teddy

1 of 1

*Make A Friend For Life™*

The Great American Teddy Bear Company™
2236 Shelburne Road
Shelburne, Vermont 05482

For For: (ISA THOMAS)

EXHIBIT 2

VTB 00021

From: SHADOW PROD. 5 PAGES

Vermont Teddy Bear Company
Make a Friend For Life
Instruction Book Copy Ideas
5/8/96; revised 5/20/96; 5/21/96; 5/23/96

How to Make a Friend ... For Life

Kit Contents

Your kit should contain the following:

- 1 teddy bear head
- 1 teddy bear body
- 2 teddy bear arms
- 2 teddy bear legs
- 1 teddy bear heart
- 1 stuffing packet full of dreams, love and 100% polyester stuffing for the teddy bear's head, body, arms and legs.
- 1 pipe T-joint
- 5 joint pins (these look like big thumb tacks!)
- 3 joint washers (these look like, well, washers)
- Heavy-duty thread
- 1 official teddy bear birth certificate.

You Will Need:

- A large sewing needle
- A wooden spoon
- One (1) grownup (Additional grownups optional)

Friendship

Friendship is a magical thing. No one knows quite how or why they do it, but when you become friends, something extraordinary happens!

Giggles and secrets and whispers and smiles
Walks and talks that go on for miles
Running and jumping and make-believe games
Laughter and horseplay and silly nicknames!

All these things suddenly, magically appear when you make a friend.

So what's making a friend all about, anyway? Well, it's not like when you make a cake, a lunch, a mess, amends or even an appointment! These are all things you can do with a friend.

but making a friend, first and foremost, is work that's also fun.

Inside this package is something magical, because you're actually going to make your own teddy bear. And when you're finished, you can make friends with the friend you've just made!

Very Important! First, the LAST thing you want to do is stuff your bear's head first. Because then your bear's liable to start offering advice on how to put a bear together, and they often get it all wrong. Bears can be silly indeed, and there's nothing sillier than a bear who's told you that the arms go where the legs go just so your teddy bear can walk on its hands!

The most important thing you need for regular friend-building is a smile. But the most important thing you'll need to build THIS kind of friend is a wooden spoon! So get your spoon ready and let's begin!

1. The Legs

First we'll fill your bear's legs with just the right amount of spring. Legs are very important to a bear, as they're used for jumping, leap-frogging, cavorting, skipping, lumbering, roaming and climbing. Your bear is going to rely on his or her legs pretty heavily indeed! Too little stuffing and your bear will just mope slowly along; too much and your bear will leap too high and perhaps begin to think it's a bird!

Remove the stuffing from the packet down to the line that reads, "Springs for Bouncing and Stuff." Divide it into two equal parts. Next, using your finger to probe around, find the hole near the top of each leg (the top is the end opposite the paw pad). Don't worry if it takes a moment or two to find the hole--it's there! Now, fill your bear's legs with stuffing. You can use the handle of your wooden spoon to help you push the stuffing all the way down to the tip of your bear's toes. Now, simply do the same with the other leg.

2. The Arms

A bear's arms do just as many things as a bear's feet! A bear's arms are for honey-eating, fly-swatting, jumping-jacking, lemonade-drinking, paw-clapping and many other things; but perhaps the most important thing a bear's arms are for is best friend-hugging.

The next line on your packet will read, "Lifetime Supply of Hugs." Take out the stuffing down to this line, and divide the stuffing in two. Just as you did with the legs, use your finger to find the hole at the top of each arm, and again, don't worry if it takes a little while to find it. Next, fill the arms with stuffing, thinking about just how you like your hugs--soft or firm--and use your spoon handle to gently push the stuffing all the way to the end of your bear's paw. Do the same with the other arm.

3. The Head

Dreams are what lead your heart down the road called the Future. Your bear's head--and your head, too--is a special factory where dreams are made. So if you can fill your bear's head with

Just the right dreams, you can be sure you and your bear will have a lifetime of wonderful fun and great adventures together.

The next line on your packet is "Dreams." Remove the stuffing down to this line and use it to gently fill your bear's head, and again, use the handle of your wooden spoon to make sure the stuffing reaches all the parts of your bear's head, especially both ears and the nose. CAUTION: There are two places where a teddy bear is most ticklish, and the nose is one of them, so take care! And don't be surprised if you hear your bear giggle.

Don't stuff the body just yet!

Putting Your Bear Together

Here's where a grownup finally comes in handy!

4. This part only looks complicated, but really, it's easy! First, have your bag of joints on hand. A teddy bear likes to be able to do fun things with his or her arms, such as swing them all the way around in a big circle just for the fun of it. So that's why a teddy bear needs joints. There are three holes at the top of your bear's arm. One is the large one you already put the stuffing through. There are two other holes near the stuffing hole, one above it and one below it. Don't worry if you don't find these right away, as they are quite small. When you've found them, push the base of the joint pin (also known as the head of the oversized thumb tack!) into the stuffing hole so that it sits just under the fur, with the pin pointed outward. Now, pull the lower hole up and slide it onto the skinny part of the pin, then pull the upper hole over the pin as well. Push them both down snugly. Do the same with the other arm. Don't attach them to the body just yet.

5. Earlier, we mentioned a bunch of things teddy bears like to do with their legs; well, to do all those fun things, teddy bears need leg joints for maximum flexibility. (On occasion, a teddy bear's even been known to do a full split; just to show off.) So, next, we'll put in your teddy bear's leg joints. Now, if you got through the arms, the legs are a cinch, because all you have to do is the exact same thing.

6. Now, even though it looks as though teddy bears don't have necks, they most certainly do; teddy bear necks are just very small and refined. We'll build your teddy bear's neck next. Find the stuffing hole in the opening where a neck would be. Again, by conducting a little finger-search, you will find smaller holes on either side of the stuffing hole. Only this time, you'll find three of them, not two. Push the joint pin into the stuffing hole and pull the other holes over it, one at a time.

Warning! Point of no return! Read the following section completely before starting to attach the joints. Once the joints are on, they're on for good!

7. Now, let's put your teddy bear together! First, find your bear's butt tag. It's called a butt tag, quite simply, because it's on your bear's butt. It's there to help your teddy bear always know which way is forward, or in other words, to know if he or she is coming or going. Sit

VTB 00024

your bear's body down in front of you, with the butt tag facing you. Now, the bear's right leg will go on the same side where your right leg is, just to the right of the butt tag. Make sure the bear's toe is pointed forward. Find the hole in the body, to the right of the butt tag where the right leg will connect. Now, push the joint pin in the right leg through the hole in the right side of the body. Take a washer in your other hand, and from the inside of your bear's body, push the washer all the way down onto the pin. Now, you've probably been wondering all along what in the world the pipe t-joint is for. Well, it's in the world for the purpose of helping you push that joint and that washer tight together!

Do the exact same thing with the left leg, then the arms, making sure the right arm is on the right side and the left arm is on the left side. Otherwise, your bear will not only have an arm on backwards, but if he or she's left-handed, your bear would be left-handed on the right side, which wouldn't make any sense at all!

8. Now, let's put your bear's head on. One hidden talent of teddy bears is that they can turn their heads all the way around in a circle! So it's important to put your bear's head on just right so that he or she doesn't get a stiff neck when he or she is turning around to see what you're doing. Poke a hole in the seam junction at the top of the teddy bear's body. Push the head pin through and as you did with the arms and legs, push the washer all the way down onto the pin, using the t-joint for that extra push.

9. Now, let's fill the body with dreams and love! Love is the gift you're giving to your bear, and it's a gift your bear will give back to you, and the more you give, the more you'll get back. As you fill your bear's heart with love, think of how you and your teddy bear will be friends with each other forever!

Reach very carefully into the last part of the stuffing packet, to the line labelled "Love." Here is the most fragile part of all. As you did before with the arms and legs, gently stuff your teddy bear's body, using the wooden spoon to make sure the stuffing gives your bear a round, jolly, bear-like belly! Take care to work the stuffing into the neck and all around the arm and leg joints. CAUTION: The other place your bear is most ticklish is in the ribs, so be careful or your bear might start rolling around on the floor giggling.

10. Now, the most important part of all: Your bear's heart. This is what will truly make your teddy bear your friend. A heart is the greatest gift of all because you can use it to give or receive love. So carefully, very carefully, place your teddy bear's heart right where you want it in your bear's proud little chest.

11. Finally, it's time to sew your bear up so that all the good things you've put inside stay where they belong, and so that ...

Dreams work right
And the springs are tight
And the arms can flail
And the heart won't fail

You can use a variety of stitches. In the illustration are a couple of good ones.

All finished? Congratulations! You've just made a friend! Now, it's time to make friends with the friend you've made! So, first of all, introduce yourself! Your bear may have a lot of questions for you. Your bear's likely to be very grateful to you for putting him or her together and bringing him or her to life. But your bear is very new to the world and so will need a lot of help to learn about all sorts of things like who your parents are, who your other friends are, what you like to do for fun and so on. You may want to introduce your bear to your toys.

Here's a checklist to help you decide what to do on your bear's first day in the world.

1. Fill in your bear's birth certificate with the exact time that last stitch was sewn, because that's the exact time of your bear's birth!
2. Your bear's in his or her birthday suit, so have a birthday party for your bear and remember the date for next year!
3. Decide whether your bear is a girl bear or a boy bear or just a bear bear, and name your bear! Hint: You might just want to ask your bear what his or her name is.

Friends for Life

There's one thing more: You've done a wonderful job putting your bear together, but he or she is still just a bear. The magic of friendship is what makes your bear come to life and makes your teddy bear truly yours. And to seal your friendship for life, here's a list of things that transform two everyday individuals magically into friends.

"Friends for Life" Code:

- Friends are considerate and fair to each other.
- Friends don't fight, and if they do, they make up.
- Friends cheer each other up when the other is low.
- Friends don't say mean things about each other (or anyone else, for that matter!)
- Friends think of the other person first.
- Friends always listen.
- Friends can disagree, as long as they remain friends.
- Friends trust each other.
- Friends share, whether it's feelings and dreams and malted milk balls, or the stuff you don't like but have to finish anyway, like lima beans, broccoli and homework.

Recite this code to your bear, and make sure he or she hears you! Now, put your ear to your bear's heart, and if you listen closely, very closely, you just might hear it beating. Congratulations! You've made a friend for life.

EXHIBIT 3

Drop Date	Qty	Cost
9/19/96	205,733	\$122,953
10/7/96	129,267	\$77,254
9/19/96	665,000	\$454,378
TOTAL	1,000,000	\$654,585

Cost includes all associated costs, not just paper, printing and postage. ie. photography, illustration, models, copywri

ing, consulting, pre-press

The Vermont Teddy Bear Co., Inc.
2236 Shelburne Road
Shelburne, Vermont 05482
(802) 985-1315 Fax (802) 985-1382

October 28, 1996
No. Pages in Fax: 3

TO: DAVID LEWIS
 World Color Press - Dyersburg Division
 FAX: (901) 285-4871

FROM: Arthur Borden

SUBJECT: Printing Order for Holiday 1996 Catalogue

*total holiday
etc*

At this point, we are planning to print 665,000 (plus overage) and our mailing tapes should contain 631,758 (*approximately*), which leaves 33,242 books remaining to be distributed.

All the keycodes that begin with 'V4C' get version 'C' of the catalogue. That means the cover says 'Buy Now - Pay Nothing' and the order form C which has 'Buy Now-Pay Later' on one side and a Deferred Billing check box on the other. The keycodes that begin with 'V4C' have names totalling 315,879, not including the catalogues to be trucked to VTBC.

If there is no charge for adding a message on the address page, please add "Order Now - pay nothing until Feb '97!" If there is a charge, or there is no room, then no message is needed.

All the keycodes that begin with 'V4F' get version 'F' of the catalogue. The cover makes no mention of billing arrangements. The order form is version 'F' and has 'Valet Service' mentioned on the box instead of deferred billing, and there is no screened check box for deferred billing at all. The keycodes that begin with 'V4F' have names totalling 315,879.

Additionally, there are another 33,000 catalogues being printed (essentially the remainder of the print run) which will be coded with sourcecodes beginning with 'V4C' and will use version 'C' of the catalogue, which is the Deferred Billing Version. That brings the total of Version 'C' of the catalogue to 348,879. These 33,000 catalogues are to be keycoded and shipped as per the following table:

KEYCODE	NUMBER	SHIPPING ADDRESS
V4C3900	24,000	QuikPak Attn: Richard Ismail/Chuck McElheny 1940 Stoutfield East Indianapolis, IN 46241

V4C3910	2,000	Vermont Teddy Bear Company 2236 Shelburne Road Shelburne, VT 05482
V4C3920	2,000	Vermont Teddy Bear Store-VT 2236 Shelburne Road Shelburne, VT 05482
V4C3930	1,500	Vermont Teddy Bear Store-NH 2936 Main St, Route 16 North Conway, NH 03860
V4C3950	400	National Catalog Corporation 104 Challenger Drive Portland, TN 37148
V4C3960	2,000	Vermont Teddy Bear Store-NY 538 Madison Avenue New York, NY 10022
V4C3970	450	Vermont Teddy Bear Company Marketing Dept 2236 Shelburne Road Shelburne, VT 05482
V4C3980	450	Vermont Teddy Bear Company Promotions 2236 Shelburne Road Shelburne, VT 05482
V4C3990	200	Vermont Teddy Bear Company Public Relations Dept 2236 Shelburne Road Shelburne, VT 05482
TOTALS	33,000	

Combining the total from this table (all 'V4C' series keycodes) with the 315,879 books of the Deferred Billing group (version 'C') and we get 348,879 of version 'C'. Combine that with 315,879 of version 'F' (control group), and the total catalogue run is 664,758, plus overage. I hope that this makes sense to you.

Sincerely,

Arthur Borden
Direct Mail Manager

PS., Included with this fax is a copy of the circulation plan for the November drop.

The Vermont Teddy Bear Co., Inc.
2236 Shelburne Road
Shelburne, Vermont 05482
(802) 985-1315 Fax (802) 985-1382

Sept 11, 1996
No. Pages in Fax: 2

TO: DAVID LEWIS
World Color Press - Dyersburg Division
FAX: (901) 285-4871

FROM: Arthur Borden

SUBJECT: Printing Order for Fall 1996 Catalogue

total fall arc

At this point, we are planning to print 335,000 (plus overage) and our mailing tapes should contain 309,381, which leaves 25,619 books remaining to be distributed.

All the keycodes that begin with 'V3A' get version A of the catalogue. That means the cover says 'Buy Now - Pay Later' and the order form A which also has 'Buy Now-Pay Later' on one side and a Deferred Billing check box on the other. The keycodes that begin with V3A have names totalling 155,073.

If there is no charge for adding a message on the address page, please add "Order Now - with no payment until Jan '97!" If there is a charge, then no message is needed.

All the keycodes that begin with 'V3B' get version B of the catalogue. The cover makes no mention of billing arrangements. The order form is version B and has 'Valet Service' mentioned on the box instead of deferred billing, and there is no screened check box for deferred billing at all. The keycodes that begin with 'V3B' have names totalling 154,308.

KEYCODE	NUMBER	SHIPPING ADDRESS
V3B3900	18,500	QuikPak Attn: Richard Ismail/Chuck McElheny 1940 Stoutfield East Indianapolis, IN 46241
V3B3910	2,000	Vermont Teddy Bear Company 2236 Shelburne Road Shelburne, VT 05482
V3B3920	2,000	VTBC Store 2236 Shelburne Road Shelburne, VT 05482
V3B3930	1,500	Vermont Teddy Bear Store 2936 Main St, Route 16 North Conway, NH 03860

V3B3950	200	National Catalog Corporation 104 Challenger Drive Portland, TN 37148
V3B3960	500	Vermont Teddy Bear Company Marketing Dept 2236 Shelburne Road Shelburne, VT 05482
V3B3970	500	Vermont Teddy Bear Company Promotions 2236 Shelburne Road Shelburne, VT 05482
V3B3980	200	Vermont Teddy Bear Company Public Relations Dept 2236 Shelburne Road Shelburne, VT 05482
TOTALS	25,400	

Combining the total from this table (all 'V3B' series keycodes) with the 154,308 books of the control group (version B) and we get 179,708 of version B. Combine that with 155,073 of version A, and the total bindery run is 334,786, plus overage. I hope that this makes sense to you and answers your questions.

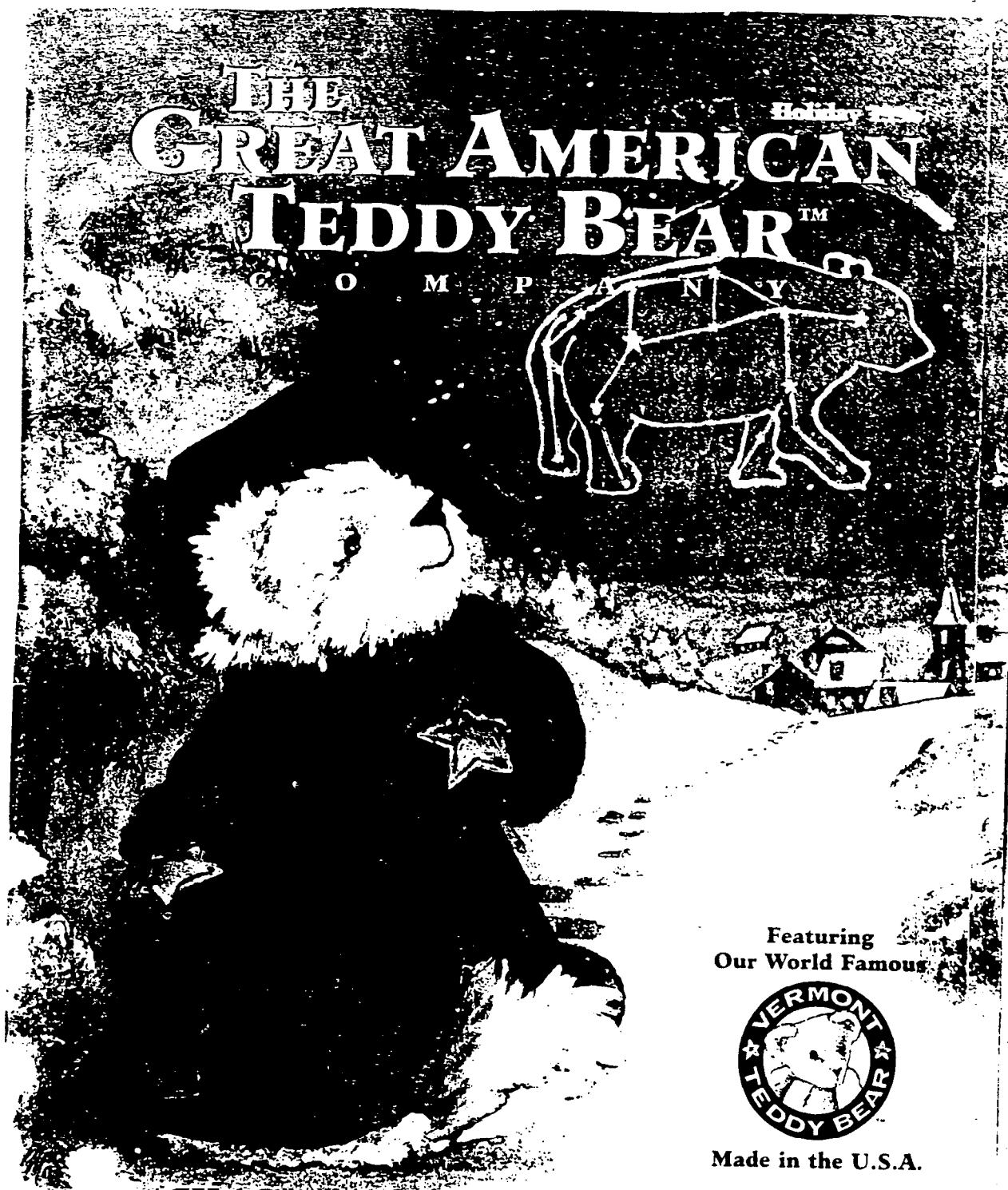
Sincerely,

Arthur Borden
Direct Mail Manager


PS., What is the weight of one catalogue? When you do your calculations for postage amount, do you include the discount for trucking into BMC's and SCF's? Or does that amount get put into the permit account for VTBC?

THE GREAT AMERICAN TEDDY BEAR™
C O M P A N Y

Holiday 1956



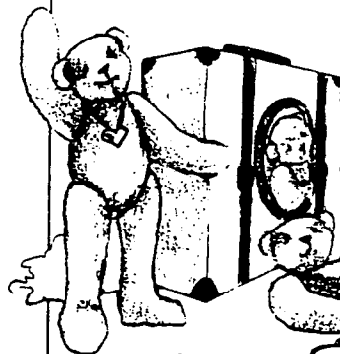
Featuring
Our World Famous



Made in the U.S.A.

We Guarantee Christmas Delivery
See Order Form for Details

Make Your Own Teddy Bears!



Now you can make your own teddy bear at home with our "Make A Friend For Life™" kit! Each kit contains everything you need to bring your friend to life—six plush parts for either "Teddy" or "Theo", magical bear stuffing, a brass heart engraved with, "Teddy loves Theo" to put inside your bear, and easy-to-follow instructions. It's all packaged in a sturdy suitcase, perfect for traveling with Teddy, Theo and all their toys and clothes.

13" "Teddy" Make a Friend Kit

670501 \$36

13" "Theo" Make a Friend Kit

670502 \$36



First you fill your bear with Dreams...

Inside the box you will find instructions and six plush parts. The polyester stuffing allows you to fill your bear perfectly for hugging. You can fill your bear's head with dreams...the heart you fill with love.

Dress your bear for big adventures

Turn to pages 44 & 45 to check out our winter clothes designed especially for your new friend and all of your new adventures together.

Save 10%

when you dress either bear in any of the outfits sold on pages 44 & 45.



Then put your bear together

Our easy snap-together T-joints allow your bears to move their arms and legs so they can play with you. They are specially designed to last through all your adventures.



Place brass heart inside bear, a final stitch & you're done!

Fill in the Birth Certificate with your Bear's name and the exact time of that last stitch. We have enclosed the Friends for Life Code to help you and your bear get your lifelong friendship started.

The Great American Teddy Bear™ Co.
104 Challenger Drive
Portland, TN 37148-1718

CHERISHABLE
Open Promptly

644XXXXXXXXX AUTO 5-DIGIT 63124

KEYCODE U4F3190 2

MAXINE CLARK

OR CURRENT RESIDENT

12 GREENBRIAR DR.

SAINT LOUIS MO

63124-1819



BULK RATE
U.S. POSTAGE
PAID
VERMONT
TEDDY BEAR



CHOOSE A BEAR

Bear Galleries:

SEARCH



BEAR-GRAM® GIFTS
[What Is A Bear-Gram?](#)
[Delivery Options](#)
[Card Messages](#)
[Corporate Sales](#)
[Customer Service](#)
[Our Lifetime Guarantee](#)
[Customer Comments](#)

VISIT OUR SISTER COMPANIES:

[The PajamaGram Company](#)

[The TastyGram Company](#)

Get a **FREE BEAR**
and save 15%



on every order with our new
Vermont Teddy Bear Platinum
Visa® Card.



Make A Friend For Life®!

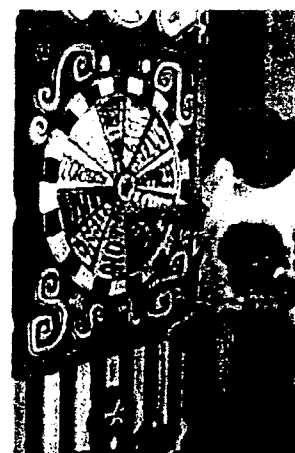
Since 1996, visitors of all ages have enjoyed creating their own Teddy Bear friends at our Bear Shop in Shelburne, Vermont. Make a 13" Bear for \$19.95 plus tax. Follow this tour to see how it's done.

Step 1.



Find the furry friend that is just right for you!
There are hundreds of Bears to choose from,
but you'll know when you've found the perfect one!

Step 2.



Go to the stuffing machine and select the stuffing of your choice that best suits your Bear. There is a hole on the back of your Bear that will allow you to add that special something to make them huggable, squeezable, snuggable and please-able!

VTB 00092

QUICK LINKS

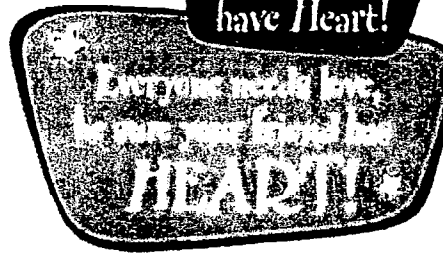
[Online Factory Tour](#)

[Make a Friend for Life®](#)

[Job Opportunities](#)

Step 3.

**You Gotta
have Heart!**



Next, place a little red felt heart inside Teddy to make him or her perfectly lovable!

Step 4.

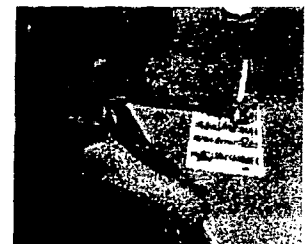
**Seal it with
a Squish!**



Hug your new friend to make sure that it is up to fluff and feels just right! At the sewing table, watch as a member of our Bear Crew sews up your Teddy.

Step 5.

The Name Game!

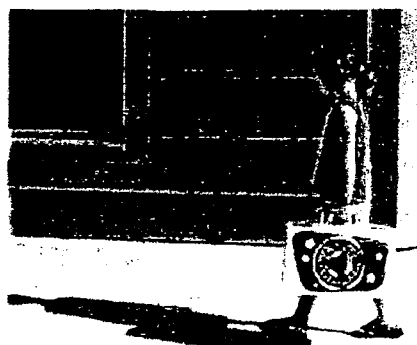


It's now time to give your new friend a name! Once you have decided on a name, our Bear Crew will help you fill out the Birth Certificate.

VTB 00093



After all that fuss your new friend is sure to need a good brushing. Our Bears love an all-over body brush. Make sure to get those hard to reach places like under the arms (ugh!), but especially behind the ears!



Your new friend is ready to follow you home in their specially-designed travel case. (Don't worry, it has an air hole so Teddy can breathe!)

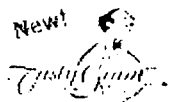
[Back to Visit Us In Vermont](#)

Bear-Gram® Gift Delivery Service VermontTeddyBear.com ~ 1-800-829-BEAR

[Home](#) | [About Us](#) | [Site Help](#) | [View Cart](#) | [Shopping](#)
[Virtual Bear-Grams®](#) | [Become a PreFUR'd Member](#)

Copyright © 1997-2002 The Vermont Teddy Bear Company, Inc.

Visit our sister company:

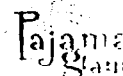


[The TastyGram Company](#)



Visit our sister company:

NEW!



[The PajamaGram Company](#)



Visit
Int



Summer Favorites



Personalization



View Cart

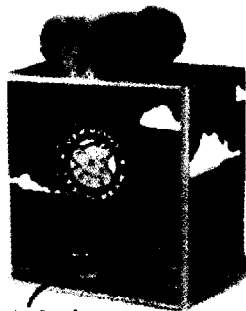


A Bear-Gram is...

CHOOSE A BEAR:

Bear Galleries: 

SEARCH FOR:



air hole



FREE Gourmet Candy
FREE Card with your personal message

BEAR-GRAM® GIFTS

What Is A Bear-Gram?

[Delivery Options](#)

[Card Messages](#)

[Corporate Sales](#)

[Customer Service](#)

[Our Lifetime Guarantee](#)

[Customer Comments](#)

[PreFUR'd Member](#)

[Program](#)

VISIT OUR SISTER

COMPANIES:

[PajamaGram Company](#)

[Calyx & Corolla Flowers](#)

[TastyGram Company](#)

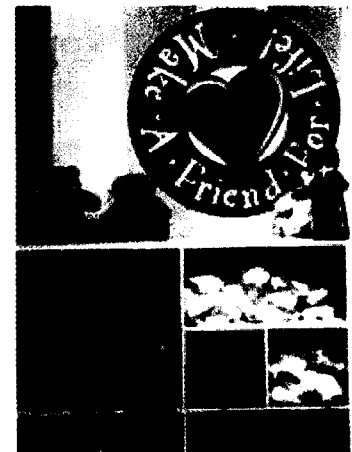


Get a **FREE BEAR** and save 15% on every order with our

Make a Friend For Life at the Vermont Teddy Bear Factory

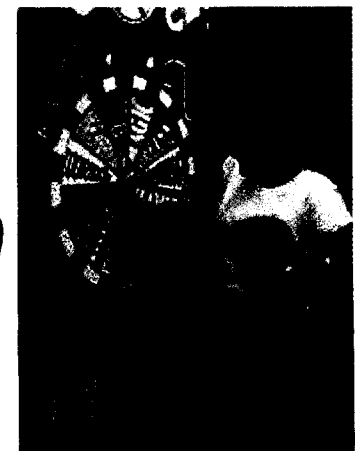
Since 1996, visitors of all ages have enjoyed creating their own Teddy Bear friends at our Factory Store and Bear Shop in Shelburne, Vermont, and now also at our store in Waterbury, Vermont. Make a 13" Bear for \$19.99 plus tax. Follow this tour to see how it's done.

Step 1.



Find the furry friend that is just right for you!
There are hundreds of Bears to choose from, but you'll know when you've found the perfect one!

Step 2.



Go to the stuffing machine and select the stuffing of your choice that best suits your Bear. There is a hole on the back of your Bear that will allow you to add that special something to make them huggable, squeezable, snuggable and please-able!

new Vermont Teddy Bear
Platinum Visa® Card.

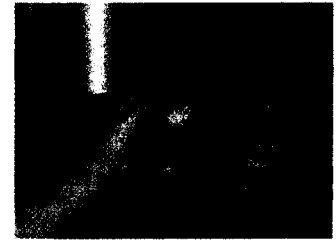


TEDDY BEAR FACTORY
Free Tour Coupon
Online Factory Tour
Make A Friend For Life®
Job Opportunities
Friend for Life Program



POPULAR SEARCHES
[Vermont Teddy Bear](#)
[PajamaGram](#)
[Virtual BearGram](#)
[Tastygram](#)
[Calyx & Corolla](#)

Step 5.



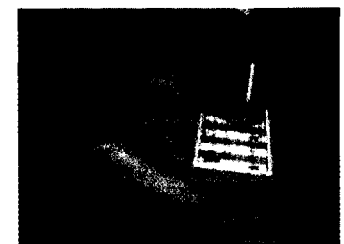
Next, place a little red felt heart inside Teddy to make him or her perfectly lovable!

Step 4.



Hug your new friend to make sure that it is up to fluff and feels just right! At the sewing table, watch as a member of our Bear Crew sews up your Teddy.

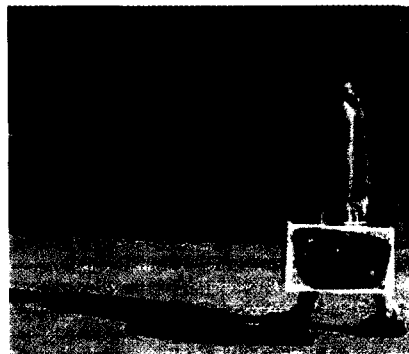
Step 3.



It's now time to give your new friend a name! Once you have decided on a name, our Bear Crew will help you fill out the Birth Certificate.



After all that fuss your new friend is sure to need a good brushing. Our Bears love an all-over body brush. Make sure to get those hard to reach places like under the arms (ugh!), but especially behind the ears!



Your new friend is ready to follow you home in their specially-designed travel case. (Don't worry, it has an air hole so Teddy can breathe!)

**Back to
Visit Us In Vermont**

Bear-Gram® Gift Delivery Service
VermontTeddyBear.com ~ 1-800-829-BI

Visit our Sister Companies



The PajamaGram Company



Calyx & Corolla
Flower Company



TheTasty
Comp.

[Home](#) | [About Us](#) | [Privacy](#) | [Security](#) | [Site Map](#) | [Investors](#) | [Help](#) | [View Free Online Greeting Cards](#) | [Become a PreFUR'd Member](#)



H. JAY SPIEGEL & ASSOCIATES

GENERAL CAUSES &
PATENT, TRADEMARK & COPYRIGHT CAUSES

SPIEGEL'S LANDING
8778 THOMAS J. STOCKTON PARKWAY
ALEXANDRIA, VIRGINIA 22308

MAIL ADDRESS: P.O. BOX 444
MOUNT VERNON, VIRGINIA 22121-0444

D.C. BAR
VIRGINIA BAR
PATENT BAR
PHONE: (703) 619-0101
FAX: (703) 619-0110
E-MAIL: JAYSPIEGEL@AOL.COM

PARIS CORRESPONDENT
LANGER-NETTER-ADLEF
53 AVENUE DE BRETEUIL
PARIS 75007 FRANCE
PHONE: 45 67 01 23
FACSIMILE: 45 67 33 86

August 12, 1999

The Honorable Commissioner of
Patents and Trademarks
Washington, D.C. 20231

Sir:

Please find attached hereto the U.S. "Actual Use" Combined Trademark and Service Mark application consisting of a three dimensional heart shaped object. Also enclosed are five (5) specimens evidencing use on the goods and five (5) specimens evidencing use in association with the services, a drawing, and a check in the amount of \$490.00 to cover the filing fee for one Class of Goods and one Class of Services.

Respectfully submitted,

H. JAY SPIEGEL & ASSOCIATES

H. Jay Spiegel

HJS:tg
Attachment

MARK: Consists of a Three Dimensional Heart Shaped Object. The Outline of a Teddy Bear is used To signify the placement of a heart shaped Object inside a stuffed or plush toy animal; The teddy bear design itself is not claimed As part of the mark, as the heart shaped Object may be placed in any stuffed or plush Toy animal.

To The Commissioner of Patents
and Trademarks:

THE VERMONT TEDDY BEAR COMPANY, INC. is a corporation of the State of New York, having a place of business at 6655 Shelburne Road, P.O. Box 965, Shelburne, Vermont 05482.

The above-identified Applicant has adopted and is using the mark shown in the accompanying drawing for both goods and services as follows:

(1) The goods consist of inserting the mark inside the goods prior to purchase as well as on blueprints and catalogs;

(2) The services consist of signage, advertising and promotional materials, marketing techniques, and by other means customary in the trade.

Applicant requests that the Trademark and Service Mark be registered in the United States Patent and Trademark Office on the Principal Register established by the Trademark Act of July 5, 1946.

The Trademark was first used in connection with the goods at least as early as September 19, 1996; was first used in interstate commerce at least as early as September 19, 1996; the Service Mark

was first used in connection with the services at least as early as September 19, 1996; was first used in interstate commerce at least as early as September 19, 1996; and both the Trademark and Service Mark are now in use in such commerce.

The Trademark is used by applying the same to plush animals and stuffed toy animals in International Class 28, and to blueprints and catalogs; and the Service Mark is used by applying the same to retail store services and mail order services featuring plush toy animals, stuffed toy animals, and accessories therefor in International Class 35; and five (5) specimens each of the mark as actually used on both goods and services are presented herewith.

The undersigned, ELISABETH ROBERT, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any registration resulting therefrom, declares that she is President of Applicant Corporation and is authorized to execute this instrument on behalf of said Corporation; she believes said Corporation to be the owner of the Trademark and Service Mark sought to be registered; to the best of her knowledge and belief no other person, firm, corporation, or association has the right to use said mark in commerce, either in the identical form or in such near resemblance thereto as may be likely, when applied to the goods of such other person, to cause confusion, or to cause mistake, or to deceive; the

facts set forth in this application are true; and all statements made of her own knowledge are true and all statements made on information and belief are believed to be true.

POWER OF ATTORNEY

Applicant hereby appoints H. JAY SPIEGEL, Registration No. 30,722, a member of the Bars of the State of Virginia, and the District of Columbia, whose address is P.O. Box 444, Mount Vernon, Virginia 22121, its duly authorized attorney to prosecute this application to register, to transact all business in the Patent and Trademark Office in connection therewith and to receive the Certificate of Registration.

THE VERMONT TEDDY BEAR COMPANY, INC.

Elisabeth Robert
By ELISABETH ROBERT, President

8-10-99
DATE

Applicant: THE VERMONT TEDDY BEAR COMPANY, INC.

Address: 6655 Shelburne Road, P.O. Box 965
Shelburne, Vermont 05482

Combined Trademark and Service Mark: Consists of a Three Dimensional Heart Shaped Object. The outline of a Teddy Bear is used to signify the placement of a heart shaped Object inside a stuffed or plush toy animal; the Teddy Bear design itself is not claimed as part of the mark, as the heart shaped object may be placed in any stuffed or plush toy animal.

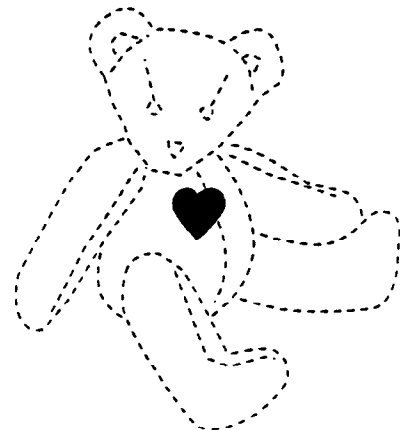
First Use: Trademark: At least as early as Sept. 19, 1996
Service Mark: At least as early as Sept. 19, 1996

In Commerce: Trademark: At least as early as Sept. 19, 1996
Service Mark: At least as early as Sept. 19, 1996

For: Goods - Inserting the mark inside the goods prior to Purchase as well as on blueprints and catalogs.

Services - Signage, advertising and promotional materials, Marketing techniques, and by other means Customary in the trade.

MARK: Consists of a Three Dimensional Heart Shaped Object. The Outline of a Teddy Bear is used To signify the placement of a heart shaped Object inside a stuffed or plush toy animal; The teddy bear design itself is not claimed As part of the mark, as the heart shaped Object may be placed in any stuffed or plush Toy animal.



Attorney: H. Jay Spiegel
P.O. Box 444
Mount Vernon, VA 22121
(703) 619-0101

FILING RECEIPT FOR TRADEMARK APPLICATION

Page 01 of 01

Oct 30, 1999

Receipt on the DATE OF FILING of the application for registration and filing fees is acknowledged for the mark identified below. The DATE OF FILING is contingent upon the collection of any payment made by check or draft. Your application will be considered in the order in which it was received and you will be notified as to the examination thereof. Action on the merits should be expected from the Patent and Trademark Office in approximately 06 months from the filing date. When inquiring about this application, include the SERIAL NUMBER, DATE OF FILING, OWNER NAME, and MARK.

H. JAY SPIEGEL
P.O. BOX 444
MOUNT VERNON, VIRGINIA 22121

ATTORNEY
REFERENCE NUMBER

PLEASE REVIEW THE ACCURACY OF THE FILING RECEIPT DATA.

A request for correction to the filing receipt should be submitted within 30 days to the following address: ASSISTANT COMMISSIONER FOR TRADEMARKS, 2900 CRYSTAL DRIVE, ARLINGTON, VIRGINIA 22202-3513. The correspondence should be marked to the attention of the Office of Trademark Program Control. The Patent and Trademark Office will review the request and make corrections when appropriate.

SERIAL NUMBER: 75/774077
FILING DATE: Aug 12, 1999
REGISTER: Principal
LAW OFFICE: 107
MARK:
MARK TYPE(S): Trademark; Service Mark
DRAWING TYPE: Miscellaneous design
FILING BASIS: Sect. 1(a) (Use in Commerce)

ATTORNEY: H. JAY SPIEGEL

OWNER: VERMONT TEDDY BEAR COMPANY, INC., THE (NEW YORK, Corporation)
6655 Shelburne Road
P.O. Box 965
Shelburne, VERMONT 05482

FOR: blueprints and catalogs
INT. CLASS: 016

FOR: plush animals and stuffed toy animals
INT. CLASS: 028
FIRST USE: Sep 19, 1996 USE IN COMMERCE: Sep 19, 1996

FOR: retail store services and mail order services featuring plush toy animals, stuffed toy animals, and accessories therefor
INT. CLASS: 035
FIRST USE: Sep 19, 1996 USE IN COMMERCE: Sep 19, 1996

ALL OF THE GOODS/SERVICES IN EACH CLASS ARE LISTED

**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

SERIAL NO. 75/774077		PAPER NO.
APPLICANT VERMONT TEDDY BEAR COMPANY, INC., THE		ADDRESS: Assistant Commissioner for Trademarks 2900 Crystal Drive Arlington, VA 22202-3513 <small>If no fees are enclosed, the address should include the words "Box Responses - No Fee."</small>
MARK MISCELLANEOUS DESIGN		
ADDRESS H. JAY SPIEGEL P.O. BOX 444 MOUNT VERNON, VIRGINIA 22121	ACTION NO. 01	
FORM PTO-1525 (5-90)	MAILING DATE 01/06/00	
U.S. DEPT. OF COMM. PAT. & TM OFFICE		REF. NO.

A PROPER RESPONSE TO THIS OFFICE ACTION MUST BE RECEIVED WITHIN 6 MONTHS FROM THE DATE OF THIS ACTION IN ORDER TO AVOID ABANDONMENT.
For your convenience and to ensure proper handling of your response, a label has been enclosed. Please attach it to the upper right corner of your response. If the label is not enclosed, print or type the Trademark Law Office No., Serial No., and Mark in the upper right corner of your response.

First Office Action

RE: Serial Number: 75/774077

The assigned examining attorney has reviewed the referenced application and determined the following.

Fails to Function as a Mark

The examining attorney refuses registration because the proposed mark does not function as a trademark nor as a service mark. Trademark Act Sections 1, 2, 3 and 45, 15 U.S.C. Sections 1051, 1052, 1053 and 1127. It neither identifies and distinguishes the goods and services of the applicant from those of others nor indicates their source. *In re Moody's Investors Service Inc.*, 13 USPQ2d 2043 (TTAB 1989); *In re Signal Companies, Inc.*, 228 USPQ 956 (TTAB 1986); *In re Hughes Aircraft Co.*, 222 USPQ 263 (TTAB 1984); TMEP sections 1301.02(a). First and foremost, none of the specimens even show the proposed mark. Furthermore, the instructions on the back of the catalog and on the blueprint indicate that the proposed mark is used as one of the pieces of a kit for making a teddy bear and that it is not used as a trademark to identify the source of the applicant's goods or services. It is merely, a body part, like one of the bears legs or arms, which is used to build a bear. As such, it would not be perceived by purchasing public as mark which identifies and distinguishes source of the applicant's goods or services. In sum, the proposed mark is not

registrable because its usage as described in specimens of record fails to impart any commercial impression as trademark or service mark.

The applicant should also note the following additional ground for refusal.

Likelihood of Confusion

The examining attorney refuses registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d), because the applicant's proposed mark, when used on or in connection with the identified goods, so resembles the mark in U.S. Registration Nos. 1744649 and 1975529 as to be likely to cause confusion, to cause mistake, or to deceive. TMEP section 1207. See the enclosed registrations.

The examining attorney must analyze each case in two steps to determine whether there is a likelihood of confusion. First, the examining attorney must look at the marks themselves for similarities in appearance, sound, connotation and commercial impression. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Second, the examining attorney must compare the goods or services to determine if they are related or if the activities surrounding their marketing are such that confusion as to origin is likely. *In re August Storck KG*, 218 USPQ 823 (TTAB 1983); *In re International Telephone and Telegraph Corp.*, 197 USPQ 910 (TTAB 1978); *Guardian Products Co., v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978).

U.S. Registration No. 1744649:

The registered mark consists of a faceted faced heart shaped object simulating a gemstone placed in the navel of a troll doll and the applicant is seeking to register a mark that consist of a three dimensional heart shaped object that is placed somewhere inside a bear. Clearly, both the applicant and the registrant have three dimensional heart shaped objects placed on or in the toys. Furthermore, the applicant has not identified a specific location of its heart, and as such, it could possibly be put inside the navel of one of the applicant's plush animals and stuffed toy animals. In addition to the marks being confusingly similar, the goods and services are highly related. The registrant's goods are "dolls, stuffed and plastic." The applicant's goods are "plush animals and stuffed toy animals" and "blueprints and catalogs" and the applicant's services are "retail store services and mail order services featuring plush toy animals, stuffed toy animals, and accessories therefor." The goods and services are related in that they are the types of goods and services that originate from the same source under the same mark. The examining attorney encloses third party registrations in which the applicant's goods and services and the registrant's goods emanate from a single source under the same mark as evidence of the relatedness of the parties' goods and services. See attached. Moreover, the goods and services are the types of goods and services that are directed to the same class of purchasers and flow in the same channels of trade. In sum, given that the marks are confusingly similar and that the goods and services are highly related, there is a likelihood of confusion.

U.S. Registration No. 1975529:

The registered mark consists of a heart positioned on the lower front portion of a doll's dress and the applicant is seeking to register a mark that consist of a three dimensional heart shaped object that is placed somewhere inside a bear. Clearly, both the applicant and the registrant have three dimensional heart shaped objects placed on or in the toys. Furthermore, the applicant has not identified a specific location of its heart, and as such, it could possibly be put anywhere in the applicant's plush animals and stuffed toy animals. The applicant's catalog even shows a drawing

of one of its bears wearing a heart on a chain around his neck. In addition to the marks being confusingly similar, the goods and services are highly related. The registrant's goods are "dolls." The applicant's goods are "plush animals and stuffed toy animals" and "blueprints and catalogs" and the applicant's services are "retail store services and mail order services featuring plush toy animals, stuffed toy animals, and accessories therefor." The goods and services are related in that they are the types of goods and services that originate from the same source under the same mark. The examining attorney encloses third party registrations in which the applicant's goods and services and the registrant's goods emanate from a single source under the same mark as evidence of the relatedness of the parties' goods and services. See attached. Moreover, the goods and services are the types of goods and services that are directed to the same class of purchasers and flow in the same channels of trade. In sum, given that the marks are confusingly similar and that the goods and services are highly related, there is a likelihood of confusion.

Although the examining attorney has refused registration, the applicant may respond to the refusal to register by submitting evidence and arguments in support of registration. If the applicant chooses to respond to the refusal to register, the applicant must also respond to the following informalities.

Specimens

Blueprints:

The blueprint specimens are unacceptable as evidence of actual trademark use for the goods in International Class 28, because they do not show the proposed mark as it is used on the "plush animals and stuffed toy animals." Any material whose function is merely to tell the prospective purchaser about the goods, or to promote the sale of the goods, is unacceptable to support trademark use. Similarly, information or instruction sheets like the applicant's blueprints are generally not acceptable for showing trademark use. *In re Schiapparelli Searle*, 26 USPQ2d 1520 (TTAB 1993); *In re Drilco Industrial Inc.*, 15 USPQ2d 1671 (TTAB 1990); *In re ITT Rayonier Inc.*, 208 USPQ 86 (TTAB 1980); *In re Bright of America, Inc.*, 205 USPQ 63 (TTAB 1979). Furthermore, the proposed mark does not appear anywhere on the specimens. The applicant must submit a stuffed or plush toy specimen that shows a three dimensional heart shaped object that is placed inside a stuffed or plush toy animal. The applicant should note that a drawing which merely illustrates what the mark looks like and is not actually used on or in connection with the goods in commerce is not acceptable.

The blueprint specimens are also unacceptable as evidence of actual trademark use for the "blueprints and catalogs" in International Class 16, because the proposed mark does not appear anywhere on the blueprint specimens. The applicant must submit a blue print or catalog specimen that shows a three dimensional heart shaped object that is placed inside a stuffed or plush toy animal on the goods. The applicant should note that a drawing which merely illustrates what the mark looks like and is not actually used on or in connection with the goods in commerce is not acceptable.

The blueprint specimens are also unacceptable to show use of the proposed mark in connection with the applicant's services in International Class 35, because they are printed publications that do not show the mark used in the sale or advertising of the "retail store services and mail order services." Trademark Act Section 45, 15 U.S.C. Section 1127; *In re Universal Oil Products Co.*, 476 F.2d 653, 177 USPQ 456 (CCPA 1973); TMEP section 1301.02. The specimen must show use of the mark "in the sale or advertising of services," as such, a printed blueprint containing

instructions on how to assembly a stuffed bear is unacceptable to show service mark use. Furthermore, the proposed mark does not appear anywhere on the specimens. The applicant must submit an advertising specimen that shows a three dimensional heart shaped object that is placed inside a stuffed or plush toy animal. The applicant should note that a drawing which merely illustrates what the mark looks like and is not actually used in connection with the services in commerce is not acceptable.

Catalog Covers:

The catalog covers are unacceptable as evidence of actual trademark use for the goods in International Class 28, because they are merely catalogs which serve to advertise the applicant's goods. Advertising material is generally not acceptable as specimens for goods. Any material whose function is merely to tell the prospective purchaser about the goods, or to promote the sale of the goods, is unacceptable to support trademark use. Furthermore, the proposed mark does not appear anywhere on the specimens. As stated above, the applicant must submit a stuffed or plush toy specimen that shows a three dimensional heart shaped object that is placed inside a stuffed or plush toy animal. The applicant should note that a drawing which merely illustrates what the mark looks like and is not actually used on or in connection with the goods in commerce is not acceptable.

The catalog covers are unacceptable as evidence of actual trademark use for the "blueprints and catalogs" in International Class 16, because the proposed mark does not appear anywhere on the catalog cover. As stated above, the applicant must submit a blue print or catalog specimen that shows a three dimensional heart shaped object that is placed inside a stuffed or plush toy animal on the goods. The applicant should note that a drawing which merely illustrates what the mark looks like and is not actually used on or in connection with the goods in commerce is not acceptable.

The catalog covers are unacceptable as evidence of actual trademark use for the "retail store services and mail order services" in International Class 35, because the proposed mark does not appear anywhere on the catalog cover. As stated above, the applicant must submit an advertising specimen that shows a three dimensional heart shaped object that is placed inside a stuffed or plush toy animal. The applicant should note that a drawing which merely illustrates what the mark looks like and is not actually used in connection with the services in commerce is not acceptable.

In sum, the applicant must submit a substitute specimen for each class of goods and services showing the proposed mark as used in commerce on the goods in International Classes 28 and 16 and showing the proposed mark as used in commerce in the sale or advertisement of the applicant's services in International Class 35. Examples of acceptable specimens for the goods in International Classes 28 and 16 are tags, labels, instruction manuals, containers or photographs that show the mark on the goods or packaging. Examples of acceptable specimens for the services in International Class 35 are signs, photographs, brochures or advertisements that show the mark used in the sale or advertising of the services. TMEP section 1301.04. The applicant must verify, with an affidavit or a declaration under 37 C.F.R. Section 2.20, that the substitute specimens were in use in commerce at least as early as the filing date of the application. *Jim Dandy Co. v. Siler City Mills, Inc.*, 209 USPQ 764 (TTAB 1981); 37 C.F.R. Section 2.59(a); TMEP section 905.10. The examining attorney encloses an example of a properly worded declaration supporting the substitute specimens below.

DECLARATION SUPPORTING THE SUBSTITUTE SPECIMENS

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that the facts set forth in this response are true; all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true. The substitute specimens were in use in commerce at least as early as the filing date of the application. 37 C.F.R. Section 2.59(a); TMEP section 905.10.

(Signature)

(Print or Type Name and Position)

(Date)

Identification of Goods

The identification of goods is unacceptable because it is indefinite and it identifies goods in other classes. TMEP section 804. The Trademark Act requires that the identification of goods be specific, clear, accurate, definite and as concise as possible. TMEP 804.01. Therefore, the applicant must make the following clarifications.

- (1) The applicant's identification of goods is entered into the record as: "plush animals and stuffed toy animals" in International Class 28, "retail store services and mail order services featuring plush toy animals, stuffed toy animals, and accessories therefor" in International Class 35 and "blueprints and catalogs" in International Class 16. Therefore, applicant must indicate the subject matter of the catalogs and classify the blueprints and the catalogs in International Class 16, e.g., "blueprints and catalogs featuring plush toy animals, stuffed toy animals, and accessories therefor in International Class 16." If the applicant did not intend to include the blueprints and catalogs in the identification, then the applicant must so indicate in its response and request that they be deleted from the identification.
- (2) The applicant must expressly indicate that the "plush animals" are toys, e.g., "plush toy animals in International Class 28."

Multiple Class Application

If the applicant adds another class to this two class application when clarifying the identification, the applicant must comply with each of the following:

- (1) The applicant must specifically identify the goods in each class and list the goods by international class with the classes listed in ascending numerical order. TMEP section 1113.01.
- (2) The applicant must submit a filing fee for each international class of goods not covered by the fee already paid. 37 C.F.R. Sections 2.6(a)(1) and 2.86(b); TMEP sections 810.01 and 1113.01. Currently, the fee for filing a trademark application is \$245.00 for each class of goods or services. *Effective January 10, 2000, the fee for*


filing a trademark application is \$325 for each class. This applies to classes added to pending applications as well as to new applications filed on or after that date.

(3) The applicant must submit either:

- (a) dates of first use and first use in commerce in each class and one specimen for each class. The dates of use must be at least as early as the filing date of this application. 37 C.F.R. Sections 2.34(a)(1) and 2.86(a), and the specimen(s) must have been in use in commerce at least as early as the filing date of the application, or
- (b) a statement of a bona fide intention to use the mark in commerce on or in connection with all the goods or services specified in each class.

The applicant must submit an affidavit or a declaration under 37 C.F.R. Section 2.20 signed by the applicant to verify (3) above. 37 C.F.R. Sections 2.59(a) and 2.71(c).

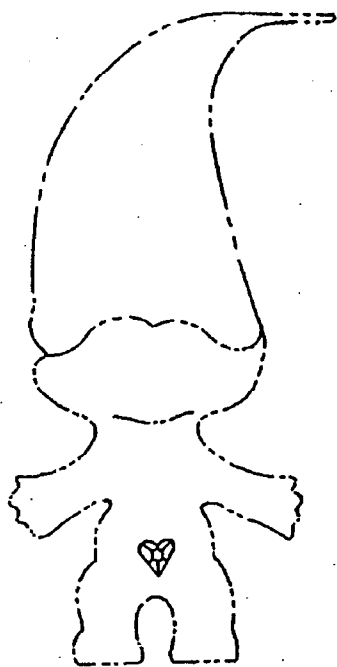
If the applicant has any questions or needs assistance in responding to this Office action, please telephone the assigned examining attorney.


 Jodi Lauterbach
 Trademark Attorney
 Law Office 107
 (703) 308-9107 ext. 293

Effective January 10, 2000, the following trademark filing fees will increase:

37 C.F.R. Section	Description of Paper Filed	Old Fee Amount	New Fee Amount (effective 1/10/2000)
2.6(a)(1)	Application for Registration, per class	\$245	\$325
2.6(a)(4)	Request for Extension of time for filing Statement of Use, per class	\$100	\$150
2.6(a)(5)	Application for Renewal, per class	\$300	\$400
2.6(a)(13)	Filing Section 15 Affidavit, per class	\$100	\$200
2.6(a)(16)	Petition for Cancellation, per class	\$200	\$300
2.6(a)(17)	Notice of Opposition, per class	\$200	\$300

See notices at 64 FR 67774 (Dec. 3, 1999) and 1229 TMOG 12 (Dec. 7, 1999).



Goods and Services

IC 028. US 022. G & S: dolls, stuffed and plastic. FIRST USE:
19910628. FIRST USE IN COMMERCE: 19910910

Mark Drawing Code

(2) DESIGN ONLY

Design Code

021101 210111 210112

Serial Number

74187583

Filing Date

July 18, 1991

Filed ITU

FILED AS ITU

Publication for Opposition Date

October 13, 1992

Registration Number

1744649

Registration Date

*** User: jlauterbac *** Serial Number: 74187583 ***

January 5, 1993

Owner Name and Address

(REGISTRANT) Ace Novelty Company, Inc. CORPORATION WASHINGTON 13434 N.E.
16th Street Box 97303 Bellevue WASHINGTON 98009

(LAST LISTED OWNER) LCD INTERNATIONAL, L.L.C. RHODE ISLAND LIMITED
LIABILITY COMPANY ASSIGNEE OF RHODE ISLAND 226 BELLEVUE AVENUE NEWPORT
RHODE ISLAND 02840

Assignment Recorded

ASSIGNMENT RECORDED

Description of Mark

The mark consists of a faceted faced object simulating a gemstone placed
in the navel of a troll doll. The broken line representation of the
troll doll itself is not part of the mark, but merely shows the position
of the mark on the goods.

Type of Mark

TRADEMARK

Register

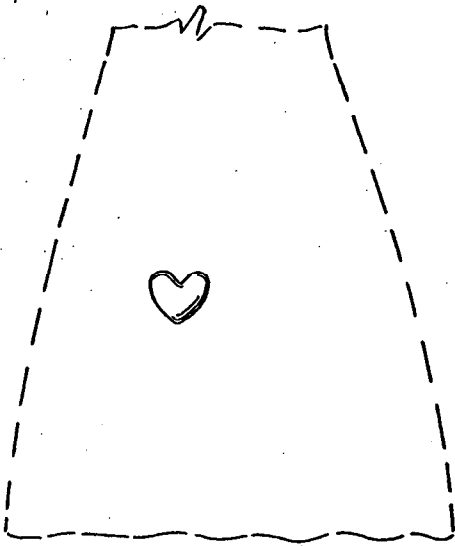
PRINCIPAL-2(F)

Affidavit Text

SECT 8. SECT 15. COMBINED SECT 8 AND SECT 15.

Live Dead Indicator

LIVE



Goods and Services

IC 028. US 022 023 038 050. G & S: dolls. FIRST USE: 19940301. FIRST
USE IN COMMERCE: 19940301

Mark Drawing Code

(2) DESIGN ONLY

Design Code

021101

Serial Number

74677363

Filing Date

May 19, 1995

Supplemental Register Date

January 23, 1996

Registration Number

1975529

Registration Date

May 21, 1996

Owner Name and Address

(REGISTRANT) Dever, Louise DBA TLc Dever INDIVIDUAL UNITED STATES 54747
Highland Drive Eau Claire MICHIGAN 49111

Description of Mark

The mark consists of a heart positioned on the lower front portion of the doll's dress. The dotted outline of the lower front portion of the doll's dress is not a part of the mark but is merely intended to show the position of the mark.

Type of Mark

TRADEMARK

*** User: jlauterbac *** Serial Number: 74677363 ***

Register
SUPPLEMENTAL

Live Dead Indicator
LIVE

Third Party Registration Evidence

POMP O'DOR

Mark

POMP O'DOR

Pseudo Mark

POMP ODOR

Goods and Services

IC 028. US 022 023 038 050. G & S: toys, namely action figures, plush toys, stuffed toy animals, windup toys, dolls and puppets. FIRST USE: 19980805. FIRST USE IN COMMERCE: 19980805

Mark Drawing Code

(1) TYPED DRAWING

Serial Number

75588072

Filing Date

November 13, 1998

Publication for Opposition Date

September 28, 1999

Registration Number

2302120

Registration Date

December 21, 1999

Owner Name and Address.

(REGISTRANT) Just Your Pal, LLC CORPORATION OHIO 10960 Wilshire Boulevard
- Suite 1240 Los Angeles CALIFORNIA 90024

Type of Mark

TRADEMARK

Register

PRINCIPAL

Live Dead Indicator

LIVE



Mark

TOY BIZ

Goods and Services

IC 028. US 022 023 038 050. G & S: Toys, namely, action figures, talking action figures, action figure accessories and playsets, toy environments for use with action figures, battery-operated action toys, action figure vehicles, battery-operated toy vehicles, toy race cars, toy road race sets, toy vehicles, toy weapons, die-cast figures, dress-up sets for children and accessories therefor, novelty jewelry for children, dolls, doll accessories, battery-operated dolls and animal figures, collector dolls, plush dolls, plush figures, stuffed animals, activity sets for children, toy model hobbycraft kits, model rockets, model rocket accessories, kites, kite accessories, gliders, glider accessories, yo-yos, flying discs, game tables, pinball type games. FIRST USE: 19880108. FIRST USE IN COMMERCE: 19880108

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Code

260117

Serial Number

75601671

Filing Date

December 8, 1998

Publication for Opposition Date

September 7, 1999

Registration Number

2296093

Registration Date

*** User: jlauterbac *** Serial Number: 75601671 ***

November 30, 1999

Owner Name and Address

(REGISTRANT) Marvel Enterprises, Inc. CORPORATION DELAWARE 685 Third
Avenue New York NEW YORK 10017

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "TOY" APART FROM THE MARK
AS SHOWN

Type of Mark

TRADEMARK

Register

PRINCIPAL

Live Dead Indicator

LIVE

RAINBOW BRITE

Mark

RAINBOW BRITE

Pseudo Mark

RAINBOW BRIGHT

Goods and Services

IC 028. US 022 023 038 050. G & S: dolls, action figures and accessories therefor, mechanical action toys, stuffed toy animals, balloons, bath toys, board games, card games, doll clothing, doll accessories, jigsaw puzzles, puppets, paper dolls, playsets for dolls, plush toys, toy vehicles. FIRST USE: 19971001. FIRST USE IN COMMERCE: 19971001

Mark Drawing Code

(1) TYPED DRAWING

Serial Number

75171673

Filing Date

September 25, 1996

Filed ITU

FILED AS ITU

Publication for Opposition Date

October 27, 1998

Registration Number

2296346

Registration Date

November 30, 1999

Owner Name and Address

(REGISTRANT) Hallmark Licensing, Inc. CORPORATION DELAWARE 2440 Pershing Road Kansas City MISSOURI 64108

Type of Mark

TRADEMARK

Register

PRINCIPAL

Live Dead Indicator

LIVE

MONKEY B.

Mark

MONKEY B.

Goods and Services

IC 028. US 022 023 038 050. G & S: toys, namely, action figures, plush toys, stuffed toy animals, windup toys, dolls and puppets. FIRST USE: 19980805. FIRST USE IN COMMERCE: 19980805

Mark Drawing Code

(1) TYPED DRAWING

Serial Number

75540797

Filing Date

August 20, 1998

Publication for Opposition Date

July 13, 1999

Registration Number

2283226

Registration Date

October 5, 1999

Owner Name and Address

(REGISTRANT) Just Your Pal, LLC CORPORATION OHIO 10960 Wilshire Boulevard Suite 1240 Los Angeles CALIFORNIA 90024

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "MONKEY" APART FROM THE MARK AS SHOWN

Type of Mark

TRADEMARK

Register

PRINCIPAL

Live Dead Indicator

LIVE

CALI FLOWER

Mark

CALI FLOWER

Pseudo Mark

CALIFLOWER CALIFORNIA FLOWER

Goods and Services

IC 028. US 022 023 038 050. G & S: toys, namely action figures, plush toys, stuffed toy animals, windup toys, dolls and puppets. FIRST USE: 19980805. FIRST USE IN COMMERCE: 19980805

Mark Drawing Code

(1) TYPED DRAWING

Serial Number

75540798

Filing Date

August 20, 1998

Publication for Opposition Date

May 11, 1999

Registration Number

2267357

Registration Date

August 3, 1999

Owner Name and Address

(REGISTRANT) Just Your Pal, LLC CORPORATION OHIO 10960 Wilshire Boulevard, Suite 1240 Los Angeles CALIFORNIA 90024

Type of Mark

TRADEMARK

Register

PRINCIPAL

Live Dead Indicator

LIVE

[Typed Drawing]

Mark

WINK'N, BLINK'N & NOD

Pseudo Mark

WINKING, BLINKING ADN NOD

Goods and Services

IC 028. US 022 023 038 050. G & S: toys, namely, preschool multiple activity toys; battery operated preschool multiple activity toys; toy musical instruments; playset buildings and figures; plush toys; stuffed toys; toy dolls; toy figures; toy vehicles; remote controlled toy vehicles and remote controlled toy animals; electronic action toys; and educational manipulative games. FIRST USE: 19980907. FIRST USE IN COMMERCE: 19980907

Mark Drawing Code

(1) TYPED DRAWING

Serial Number

75361674

Filing Date

September 23, 1997

Filed ITU

FILED AS ITU

Publication for Opposition Date

May 4, 1999

Registration Number

2264159

Registration Date

July 27, 1999

Owner Name and Address

(REGISTRANT) WB&N Inc. CORPORATION NEW YORK Suite 29, 950A Union Road
West Seneca NEW YORK 14224

Type of Mark

TRADEMARK

Register

PRINCIPAL

Live Dead Indicator

LIVE

[Typed Drawing]

Mark

CHRISTY

Goods and Services

IC 028. US 022 023 038 050. G & S: toys, games and playthings, namely, stuffed toy animals, building blocks, cases for play accessories, Christmas stockings, hobby craft sets comprised of interlocking blocks for building toy villages, porcelain dolls, jigsaw puzzles, jump ropes, collectible dolls, toy mobiles, musical toys, non-electric Christmas tree ornaments, parlor games, paper dolls, play houses, plush toys, plush dolls, soft sculptured dolls, non-furniture toy boxes, toy stamps, toy action figures, all based on characters from children's inspirational books. FIRST USE: 19990303. FIRST USE IN COMMERCE: 19990303

Mark Drawing Code

(1) TYPED DRAWING

Serial Number

75301646

Filing Date

June 2, 1997

Filed ITU

FILED AS ITU

Publication for Opposition Date

December 23, 1997

Registration Number

2257749

Registration Date

June 29, 1999

Owner Name and Address

(REGISTRANT) Marshall-LeSourd, L.L.C. LIMITED LIABILITY COMPANY VIRGINIA
c/o Gammon & Grange, P.C. 8280 Greensboro Drive, Seventh Floor McLean
VIRGINIA 221023807

Prior Registration(s)

1975768;1990697;1995988;2001818;2001819;2004822;2019611;2019612;AND
OTHERS

Type of Mark

TRADEMARK

Register

PRINCIPAL

Live Dead Indicator

LIVE

[Typed Drawing]

Mark

ANIMORPHS

Goods and Services

IC 028. US 022 023 038 050. G & S: toys, games and playthings, namely, board games, card games, pinball games, puzzle toys, jigsaw puzzles, tops, inflatable toys, balloons, water squirting toys, hobby arts and craft kits comprising blocks and pieces for making models; athletic equipment, namely, protective pads and ball for all types of sports; roller skates and skateboards; dolls, play figures and their components; play sets for dolls and play figures; puppets; toy models; stuffed animals and plush toys; all based on a fictional series for children.
FIRST USE: 19981200. FIRST USE IN COMMERCE: 19981200

Mark Drawing Code

(1) TYPED DRAWING

Serial Number

75202275

Filing Date

November 22, 1996

Filed ITU

FILED AS ITU

Publication for Opposition Date

June 10, 1997

Registration Number

2246437

Registration Date

May 18, 1999

Owner Name and Address

(REGISTRANT) Scholastic Inc. CORPORATION NEW YORK 555 Broadway New York
NEW YORK 10012

Type of Mark

TRADEMARK

Register

PRINCIPAL

Live Dead Indicator

LIVE

*** User: jlauterbac *** Serial Number: 75311686 *** 1/6/00 9:01:16 AM **

[Typed Drawing]

Mark

WATER BUDDIES

Goods and Services

IC 028. US 022 023 038 050. G & S: children's games and toys, namely, toy figures, water immersible toy action figures, toy animal figures, kickboards, plush toy dolls, plush toy animals and stuffed animals.
FIRST USE: 19940604. FIRST USE IN COMMERCE: 19940604

Mark Drawing Code

(1) TYPED DRAWING

Serial Number

75311686

Filing Date

June 19, 1997

Publication for Opposition Date

April 7, 1998

Registration Number

2236464

Registration Date

April 6, 1999

Owner Name and Address

(REGISTRANT) Kahn, Michael INDIVIDUAL AUSTRALIA 5930 Lillian Street Los Angeles CALIFORNIA 90001

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "WATER" APART FROM THE MARK AS SHOWN

Type of Mark

TRADEMARK

Register

PRINCIPAL

Live Dead Indicator

LIVE

*** Search: 9 *** Document Number: 10 ***

*** User: jlauterbac *** Serial Number: 75289864 *** 1/6/00 9:01:16 AM **

[Typed Drawing]

Mark

BAMBEANOS

Goods and Services

IC 028. US 022 023 038 050. G & S: toys and games, namely, stuffed animals, stuffed toys, plush toys, doll clothing, and plastic and rubberized figurines. FIRST USE: 19970900. FIRST USE IN COMMERCE: 19970900

Mark Drawing Code

(1) TYPED DRAWING

Serial Number

75289864

Filing Date

May 12, 1997

Filed ITU

FILED AS ITU

Publication for Opposition Date

July 21, 1998

Registration Number

2237549

Registration Date

April 6, 1999

Owner Name and Address

(REGISTRANT) Books-A-Million, Inc. CORPORATION DELAWARE P.O. Box 19768
Birmingham ALABAMA 35219

Type of Mark

TRADEMARK

Register

PRINCIPAL

Live Dead Indicator

LIVE

*** Search: 9 *** Document Number: 11 ***



Goods and Services

IC 028. US 022 023 038 050. G & S: games and playthings, namely, board games, stuffed toy animals, plush toys, character figures, jigsaw puzzles, character dolls, and educational play toys. FIRST USE: 19960910. FIRST USE IN COMMERCE: 19960910

Mark Drawing Code

(2) DESIGN ONLY

Design Code

030104 030124 030126

Serial Number

75976561

Filing Date

July 1, 1993

Filed ITU

FILED AS ITU

Publication for Opposition Date

September 12, 1995

Registration Number

*** User: jlauterbac *** Serial Number: 75976561 ***

2117036

Registration Date
November 25, 1997

Owner Name and Address
(REGISTRANT) DR. SEUSS ENTERPRISES, L.P. CORPORATION CALIFORNIA 7301
ENCELIA DRIVE LA JOLLA CALIFORNIA 92037

Assignment Recorded
ASSIGNMENT RECORDED

Prior Registration(s)
7440980

Type of Mark
TRADEMARK

Register
PRINCIPAL

Live Dead Indicator
LIVE

*** User: jlauterbac *** Serial Number: 75975743 *** 1/6/00 9:01:17 AM **

[Typed Drawing]

Mark

HOLLYWOOD HOUNDS

Goods and Services

IC 028. US 022 023 038 050. G & S: toys and playthings for pre-school children and infants, namely plush and stuffed animals and dolls. FIRST USE: 19921130. FIRST USE IN COMMERCE: 19930715

Mark Drawing Code

(1) TYPED DRAWING

Serial Number

75975743

Filing Date

July 23, 1993

Filed ITU

FILED AS ITU

Publication for Opposition Date

July 18, 1995

Registration Number

2045171

Registration Date

March 11, 1997

Owner Name and Address

(REGISTRANT) Cultural Exchange Corporation CORPORATION MINNESOTA
Interchange Tower Suite 180 600 South Highway 169 St. Louis Park
MINNESOTA 55426

Assignment Recorded

ASSIGNMENT RECORDED

Prior Registration(s)

7441602

Type of Mark

TRADEMARK

Register

PRINCIPAL

Live Dead Indicator

LIVE

*** Search: 9 *** Document Number: 14 ***

[Typed Drawing]

Mark

SAND PETS

Goods and Services

IC 028. US 022 023 038 050. G & S: toys, namely, dolls, figures, plush toys, stuffed animals. FIRST USE: 19970910. FIRST USE IN COMMERCE: 19970910

Mark Drawing Code

(1) TYPED DRAWING

Serial Number

75274957

Filing Date

April 15, 1997

Filed ITU

FILED AS ITU

Publication for Opposition Date

December 30, 1997

Registration Number

2179624

Registration Date

August 4, 1998

Owner Name and Address

(REGISTRANT) Southern States Marketing, Inc. CORPORATION GEORGIA 2066
Airport Industrial Park Drive Marietta GEORGIA 30062

Type of Mark

TRADEMARK

Register

PRINCIPAL

Live Dead Indicator

LIVE

*** User: jlauterbac *** Serial Number: 75104336 *** 1/6/00 9:01:17 AM **

[Typed Drawing]

Mark

ALASKAN FRIENDS

Goods and Services

IC 028. US 022 023 038 050. G & S: playthings, namely, plush toys, stuffed toys, soft sculpture toys, dolls, soft sculpture dolls, toy figures and stuffed toy animals. FIRST USE: 19970100. FIRST USE IN COMMERCE: 19970100

Mark Drawing Code

(1) TYPED DRAWING

Serial Number

75104336

Filing Date

May 15, 1996

Filed ITU

FILED AS ITU

Publication for Opposition Date

January 28, 1997

Registration Number

2155444

Registration Date

May 5, 1998

Owner Name and Address

(REGISTRANT) Arctic Circle Enterprises, Inc. CORPORATION ALASKA 3812
Spenard Road, #100 Anchorage ALASKA 99517

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ALASKAN" APART FROM THE
MARK AS SHOWN

Type of Mark

TRADEMARK

Register

PRINCIPAL

Live Dead Indicator

LIVE

*** Search: 9 *** Document Number: 17 ***

[Typed Drawing]

Mark

KIDS CARING 'N SHARING

Pseudo Mark

KIDS CARING AND SHARING

Goods and Services

IC 028. US 022 023 038 050. G & S: toys, namely, toy figures, dolls, balloons, toy coin banks, blocks, toy clocks, toy trains, toy modeling clay, toy musical instruments, toy pencil toppers, toy plush animals, toy rattles, toy scooters, toy stuffed animals, toy boats, toy planes, toy vehicles, toy whistles, board games, card games, puzzles, toy balls, toy aerial flying disks, toy tea sets, playfoods, kitchen sets and toy puppets; sporting goods, namely, skis, baseballs, basketballs, footballs, and soccer balls; Christmas tree ornaments, namely, bells; Christmas stockings; artificial Christmas wreaths; Christmas tree decorations; and Christmas garlands. FIRST USE: 19960206. FIRST USE IN COMMERCE: 19960206

Mark Drawing Code

(1) TYPED DRAWING

Serial Number

75012676

Filing Date

October 31, 1995

Filed ITU

FILED AS ITU

Publication for Opposition Date

February 25, 1997

Registration Number

2143111

Registration Date

March 10, 1998

Owner Name and Address

(REGISTRANT) MANTON, PATRICIA INDIVIDUAL UNITED STATES 41-15 45th Street
Long Island City NEW YORK 11104

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "KIDS" APART FROM THE MARK
AS SHOWN

Type of Mark

TRADEMARK

Register

PRINCIPAL

Live Dead Indicator

*** User: jlauterbac *** Serial Number: 75012676 ***

i LIVE

*** Search: 9 *** Document Number: 22 ***

[Typed Drawing]

Mark

STONE PROTECTORS

Goods and Services

IC 028. US 022 023 038 050. G & S: toy action and play figures and accessories therefor, mechanical action toys, action skill games, action-type target games, air mattresses for recreational use, toy airplanes, stuffed toy animals, plush toy animals, toy armor, toy arrows, card games, balloons, toy banks, baseballs, bathtub toys, bean bags, toy blocks, board games, video games and video game cartridges, cases for dolls, action figures and for play accessories, computer game cassettes, video game machines, amusement park rides, Christmas tree decorations, action figure character clothing, computer game accessories; namely, cartridges, cassettes, discs, programs, tapes, hand held units for playing video games, costume masks, party favors in the nature of crackers or noisemakers, jigsaw and manipulative puzzles, kites, ride-on toys, magic trick kits. FIRST USE: 19921231. FIRST USE IN COMMERCE: 19921231

Mark Drawing Code

(1) TYPED DRAWING

Serial Number

74309931

Filing Date

September 2, 1992

Filed ITU

FILED AS ITU

Publication for Opposition Date

June 21, 1994

Change in Registration

CHANGE IN REGISTRATION HAS OCCURRED

Registration Number

2074100

Registration Date

June 24, 1997

Owner Name and Address

(REGISTRANT) KAM TOYS & NOVELTY MFG. LTD. CORPORATION HONG KONG 6/F,
GUARDFORCE CENTRE 3 KOK YUEN STREET, EAST HUNG HOM, KOWLOON HONG KONG

Assignment Recorded

ASSIGNMENT RECORDED

Type of Mark

TRADEMARK

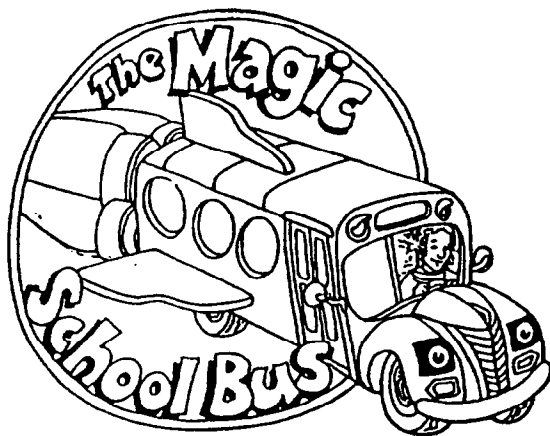
Register

PRINCIPAL

*** User: jlauterbac *** Serial Number: 74309931 ***

Live Dead Indicator
LIVE

*** Search: 9 *** Document Number: 23 ***



Mark

THE MAGIC SCHOOL BUS

Goods and Services

IC 028. US 022 023 038 050. G & S: toys, games and playthings, namely jigsaw and activity puzzles; board games; toy action figures and accessories therefor; dolls and doll accessories; plush toys; stuffed toy animals and figures; video games and accessories; computer games and accessories; video game cartridges, disks and cassettes; interactive computer games; toy craft kits consisting of paper, plastic or wood for assembling into toys; and puppets. FIRST USE: 19940900. FIRST USE IN COMMERCE: 19940900

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Code

020301 180504 260117

Serial Number

74588005

Filing Date

October 20, 1994

Filed ITU

FILED AS ITU

Publication for Opposition Date

September 15, 1998

Registration Number

2296239

Registration Date

November 30, 1999

Owner Name and Address

(REGISTRANT) Scholastic Inc. CORPORATION NEW YORK 555 Broadway New York
NEW YORK 10012

*** User: jlauterbac *** Serial Number: 74588005 ***

Prior Registration(s)
1741213

Type of Mark
TRADEMARK

Register
PRINCIPAL

Live Dead Indicator
LIVE

*** User: jlauterbac *** Serial Number: 74111453 *** 1/6/00 9:01:18 AM **

[Typed Drawing]

Mark

SPORTS STUFF

Goods and Services

IC 028. US 022. G & S: plush toys and particularly stuffed animals and dolls. FIRST USE: 19910201. FIRST USE IN COMMERCE: 19910201

Mark Drawing Code

(1) TYPED DRAWING

Serial Number

74111453

Filing Date

November 1, 1990

Filed ITU

FILED AS ITU

Publication for Opposition Date

September 10, 1991

Registration Number

1704310

Registration Date

July 28, 1992

Owner Name and Address

(REGISTRANT) Good Stuff Corp. CORPORATION NEW YORK 47-00 33rd Street Long Island City NEW YORK 11101

(LAST LISTED OWNER) WIN STUFF, INC. CORPORATION BY ASSIGNMENT DELAWARE 47-00 33RD STREET LONG ISLAND CITY NEW YORK

Assignment Recorded

ASSIGNMENT RECORDED

Type of Mark

TRADEMARK

Register

PRINCIPAL

Affidavit Text

SECT 15. SECT 8 (6-YR).

Live Dead Indicator

LIVE

*** Search: 9 *** Document Number: 26 ***

*** User: jlauterbac *** Serial Number: 74280713 *** 1/6/00 9:01:18 AM **

[Typed Drawing]

Mark

BUCKET BABY

Pseudo Mark

BUCKET BABY

Goods and Services

IC 028. US 022. G & S: soft sculptured toys; namely, stuffed, plush and molded toys in the form of human-like dolls, animals and non-human figures. FIRST USE: 19910903. FIRST USE IN COMMERCE: 19910903

Mark Drawing Code

(1) TYPED DRAWING

Serial Number

74280713

Filing Date

June 2, 1992

Publication for Opposition Date

April 27, 1993

Registration Number

1782804

Registration Date

July 20, 1993

Owner Name and Address

(REGISTRANT) Lynden, Margaret INDIVIDUAL UNITED STATES 439 Portland Avenue St. Paul MINNESOTA 55102

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BABY" APART FROM THE MARK AS SHOWN

Type of Mark

TRADEMARK

Register

PRINCIPAL

Affidavit Text

SECT 15. SECT 8 (6-YR).

Live Dead Indicator

LIVE

*** Search: 9 *** Document Number: 27 ***

[Typed Drawing]

Mark

MY TWINN

Goods and Services

IC 016. US 002 005 022 023 029 037 038 050. G & S: stationery, stationery boxes, stationery writing paper and envelopes, organizers for stationery use, pencils, diaries, pencil cases, memorandum books, personal organizers, children's books, children's activity books, journals for recording family histories and traditions. FIRST USE: 19960921. FIRST USE IN COMMERCE: 19960921

IC 025. US 022 039. G & S: hats and clothing, namely, dresses, nightgowns, shoes, socks, jumpsuits, overalls, shirts tights. FIRST USE: 19930821. FIRST USE IN COMMERCE: 19930918

IC 028. US 022 023 038 050. G & S: dolls, doll accessories, doll clothing, doll stands, doll furniture. FIRST USE: 19930821. FIRST USE IN COMMERCE: 19930918

IC 035. US 100 101 102. G & S: mail-order catalog services featuring dolls, doll clothing, doll stands, doll furniture, sunglasses, costume jewelry, stationery, stationery boxes, stationery writing paper and envelopes, organizers for stationery use, pencils, pencil cases, diaries, memorandum books, personal organizers, purses, backpacks, jewelry boxes not of metal, picture frames, wicker baskets, hair brushes, hats and clothing, namely, dresses, nightgowns, shoes, socks, jumpsuits, overalls, shirts, tights; retail store services featuring dolls, doll clothing, doll stands, doll furniture, sunglasses, costume jewelry, stationery, stationery boxes, stationery writing paper and envelopes, organizers for stationery use, pencils, pencil cases, diaries, memorandum books, personal organizers, purses, backpacks, jewelry boxes not of metal, picture frames, wicker baskets, hair brushes, hats and clothing, namely, dresses, nightgowns, shoes, socks, jumpsuits, overalls, shirts, tights, repair of toys, and doll hospital services by means of a global computer network. FIRST USE: 19930821. FIRST USE IN COMMERCE: 19930918

IC 040. US 100 103 106. G & S: custom manufacture of dolls, doll clothing, and doll accessories; manufacture of dolls, doll clothing, and doll accessories to order and/or specification of others. FIRST USE: 19930821. FIRST USE IN COMMERCE: 19930918

Mark Drawing Code

(1) TYPED DRAWING

Serial Number

75341868

Filing Date

August 15, 1997

Publication for Opposition Date

September 15, 1998

Registration Number

2230190

*** User: jlauterbac *** Serial Number: 75341868 ***

Registration Date
March 9, 1999

Owner Name and Address
(REGISTRANT) Lifelike Company, The DBA My Twinn CORPORATION DELAWARE 5655
S. Yosemite Street Englewood COLORADO 80111

Prior Registration(s)
1897057

Type of Mark
TRADEMARK. SERVICE MARK

Register
PRINCIPAL

Live Dead Indicator
LIVE

*** Search: 12 *** Document Number: 3 ***

Mark [Typed Drawing]

MINI MUNDUS

Translation

The word "MUNDUS" is an ancient Latin word for "world".

Goods and Services

IC 016. US 002 005 022 023 029 037 038 050. G & S: printed matter, namely miniature art prints, posters, portraits, music sheets, product boxes, book covers and wallpaper for use in doll houses; catalogs and assembly sheets in the field of dolls, doll houses and doll accessories, sold separately. FIRST USE: 19790801. FIRST USE IN COMMERCE: 19860901

IC 028. US 022 023 038 050. G & S: dolls, doll accessories, doll houses and doll house furnishings and accessories and parts for the aforesaid goods. FIRST USE: 19790801. FIRST USE IN COMMERCE: 19860901

Mark Drawing Code

(1) TYPED DRAWING

Serial Number

74596481

Filing Date

November 8, 1994

Publication for Opposition Date

February 6, 1996

Registration Number

1970968

Registration Date

April 30, 1996

Owner Name and Address

(REGISTRANT) MINI MUNDUS HOBBY GMBH CORPORATION FED REP GERMANY
Raiffeisenstrasse 3 D-63303 Dreieich FED REP GERMANY

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "MINI" APART FROM THE MARK AS SHOWN

Type of Mark

TRADEMARK

Register

PRINCIPAL

Live Dead Indicator

LIVE

[Typed Drawing]

Mark

ANNALEE DOLL SOCIETY

Goods and Services

IC 035. US 101. G & S: conducting auctions for collectible dolls and accessories. FIRST USE: 19750000. FIRST USE IN COMMERCE: 19750000

IC 016. US 038. G & S: periodically published magazines, newsletters, price guides, and catalogs in the field of collectible dolls and accessories. FIRST USE: 19830000. FIRST USE IN COMMERCE: 19830000

IC 028. US 022. G & S: soft sculpture dolls and accessories. FIRST USE: 19540000. FIRST USE IN COMMERCE: 19540000

IC 041. US 107. G & S: sponsoring social events for doll collectors to promote collectible dolls and accessories. FIRST USE: 19750000. FIRST USE IN COMMERCE: 19750000

IC 042. US 100. G & S: catalog services in the field of collectible dolls and accessories; association services; namely, promoting the interests of doll collectors. FIRST USE: 19570000. FIRST USE IN COMMERCE: 19570000

Mark Drawing Code

(1) TYPED DRAWING

Serial Number

74283279

Filing Date

June 8, 1992

Publication for Opposition Date

May 4, 1993

Registration Number

1784083

Registration Date

July 27, 1993

Owner Name and Address

(REGISTRANT) ANNALEE MOBILITEE DOLLS, INC. CORPORATION NEW HAMPSHIRE Box 708, Reservoir Road Meredith NEW HAMPSHIRE 032530708

Assignment Recorded

ASSIGNMENT RECORDED

Prior Registration(s)

0652350

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "DOLL" APART FROM THE MARK AS SHOWN

*** User: jlauterbac *** Serial Number: 74283279 ***

Type of Mark

TRADEMARK. SERVICE MARK

Register

PRINCIPAL

Live Dead Indicator

LIVE

*** Search: 12 *** Document Number: 16 ***

M. J. Hummel

Mark

M. I. HUMMEL

Goods and Services

IC 015. US 036. G & S: Music Boxes. FIRST USE: 19680400. FIRST USE IN COMMERCE: 19680400

IC 016. US 038. G & S: Calendars and Collectors Catalogs. FIRST USE: 19540100. FIRST USE IN COMMERCE: 19540100

IC 021. US 006 030. G & S: Ceramic Articles-Namely, Ceramic Figurines, Bookends, Lamp Bases, Candlesticks, Wall Plaques, Holy Water Fonts, and Ceramic Plates and Bowls. FIRST USE: 19350100. FIRST USE IN COMMERCE: 19360000

IC 028. US 022. G & S: Dolls. FIRST USE: 19580700. FIRST USE IN COMMERCE: 19580700

IC 034. US 008. G & S: Ash Trays. FIRST USE: 19570000. FIRST USE IN COMMERCE: 19570000

Mark Drawing Code

(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Serial Number

73010423

Filing Date

January 8, 1974

Publication for Opposition Date

March 18, 1975

Registration Number

1154849

Registration Date

May 19, 1981

Owner Name and Address

(REGISTRANT) W. GOEBEL-PORZELLANFABRIK LIMITED PARTNERSHIP FED REP GERMANY POSTFACH 1146/47 D-8633 RODENTAL, BAVARIA FED REP GERMANY

Assignment Recorded

ASSIGNMENT RECORDED

Prior Registration(s)

0615433;0726688;AND OTHERS

Description of Mark

*** User: jlauterbac *** Serial Number: 73010423 ***

* The mark consists of the signature, "M. I. Hummel", in German script, of the late Sister Maria Innocentia (Berta) Hummel, of the Franciscan Convent Siessen near Saalgau, Germany.

Type of Mark
TRADEMARK

Register
PRINCIPAL-2(F)

Affidavit Text
SECT 8. SECT 15. COMBINED SECT 8 AND SECT 15.

Live Dead Indicator
LIVE



Mark

HIGHLANDER

Pseudo Mark

HIGHLANDER

Goods and Services

IC 009. US 021 023 026 036 038. G & S: series of video recordings featuring futuristic fantasy-adventure and action-oriented stories

IC 016. US 002 005 022 023 029 037 038 050. G & S: fan magazines, posters, books, comic books, calendars, collector trading cards, and direct mail pamphlets and catalogs, all featuring futuristic fantasy-adventure and action-oriented stories relating to the motion picture series and television series with the same name

IC 028. US 022 023 038 050. G & S: video game software, dolls, board games, computer game CD-ROM software, handheld units for playing electronic games, action figures, toy vehicles, role playing games and costume masks, toy swords, and toy action vehicles, all related to and distributed in connection with the motion picture series and television series with the same name

IC 041. US 100 101 107. G & S: entertainment services, namely, a series of motion pictures and television programs featuring futuristic fantasy-adventure and action-oriented fictional stories

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Code

261301 261713

Serial Number

75975927

Filing Date

September 22, 1994

Filed ITU

FILED AS ITU

Publication for Opposition Date

September 15, 1998

Registration Number

2209305

*** User: jlauterbac *** Serial Number: 75975927 ***

Registration Date

December 8, 1998

Owner Name and Address

(REGISTRANT) Gaumont Television CORPORATION FRANCE 24 rue Jacques Dulud
92 200 Neuilly-sur-Seine FRANCE

Section 44 Indicator

SECT44

Prior Registration(s)

7457711

Description of Mark

The stippling in the drawing is for shading purposes only and is not
intended to indicate color.

Type of Mark

TRADEMARK. SERVICE MARK

Register

PRINCIPAL

Live Dead Indicator

LIVE

*** Search: 12 *** Document Number: 4 ***

HOSUNG

Mark
HOSUNG

Goods and Services
IC 028. US 022 023 038 050. G & S: Toys, namely, stuffed animals, puppets, and dolls. FIRST USE: 19820200. FIRST USE IN COMMERCE: 19820200

IC 035. US 100 101 102. G & S: mail order catalog services featuring toys, namely, stuffed animals, puppets, and dolls. FIRST USE: 19820200. FIRST USE IN COMMERCE: 19820200

Mark Drawing Code
(1) TYPED DRAWING

Serial Number
75482530

Filing Date
May 11, 1998

Publication for Opposition Date
October 5, 1999

Registration Number
2303647

Registration Date
December 28, 1999

Owner Name and Address
(REGISTRANT) Hosung N.Y. Trading Inc. CORPORATION NEW YORK 300 Kingsland Avenue Brooklyn NEW YORK 11222

Type of Mark
TRADEMARK. SERVICE MARK

Register
PRINCIPAL

Live Dead Indicator
LIVE

GYMBOREE

Mark

GYMBOREE

Goods and Services

IC 025. US 022 039. G & S: clothing, namely sweatshirts, coats, snowsuits, pants, sport shirts, shirts, hats, caps, exercise suits, warm-up suits, gym suits, leotards, leggings, swimwear, sleepwear, underwear, T-shirts, jackets, belts, shorts, gloves, mittens, footwear, slippers, shoes, sandals, sneakers, sweaters, jumpers, overalls, baby pants, smocks and tights. FIRST USE: 19870000. FIRST USE IN COMMERCE: 19870000

IC 028. US 022 023 038 050. G & S: toys, namely dolls, puppets, toy stuffed animals and characters, play parachutes, rubber action balls, finger puppets, toy boxes, party favors in the nature of small toys, bubble making wands and solution sets, play mats for use with toys and children's games, computer video game programs, toy play lanterns and toy play lights, playhouses, gymnastic apparatus and gymnastic exercise mats, and children's play and exercise equipment, namely tubes, slides, stairs, steps, ladders, tunnels, tilt platforms and hanging bars. FIRST USE: 19870000. FIRST USE IN COMMERCE: 19870000

IC 035. US 100 101 102. G & S: franchising, namely rendering technical aid and assistance in the establishment and/or operation of child/parent gym class centers and play programs, and business management consultation. FIRST USE: 19870000. FIRST USE IN COMMERCE: 19870000

IC 041. US 100 101 107. G & S: providing education and play classes, namely exercise and gymnastic instruction classes, sensory-motor play programs, and story-telling and activities classes for children and/or children and parents, and organizing and conducting birthday parties for children and other children's entertainment events. FIRST USE: 19870000. FIRST USE IN COMMERCE: 19870000

IC 042. US 100 101. G & S: retail store services and mail order services featuring clothing, toys, games and accessories for children. FIRST USE: 19870000. FIRST USE IN COMMERCE: 19870000

Mark Drawing Code

(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Serial Number

74606097

Filing Date

November 25, 1994

Publication for Opposition Date

November 21, 1995

*** User: jlauterbac *** Serial Number: 74606097 ***

Registration Number
1955988

Registration Date
February 13, 1996

Owner Name and Address
(REGISTRANT) GYMBOREE CORPORATION, THE CORPORATION DELAWARE 700 Airport
Boulevard Burlingame CALIFORNIA 94010

Assignment Recorded
ASSIGNMENT RECORDED

Prior Registration(s)
1181447;1436305;AND OTHERS

Type of Mark
TRADEMARK. SERVICE MARK

Register
PRINCIPAL

Live Dead Indicator
LIVE

*** Search: 14 *** Document Number: 2 ***

FOREVER FUN

Mark

FOREVER FUN

Goods and Services

IC 028. US 022 023 038 050. G & S: TOYS, NAMELY, TOY VEHICLES; DOLLS AND DOLL ACCESSORIES; BALL SETS COMPRISING SOCCER BALLS, FOOTBALLS, BASKETBALLS, AND BASEBALLS; POGO STICKS AND STILTS; AND BASKETBALL SETS COMPRISED OF BASKETBALL NETS AND BASKETBALLS. FIRST USE: 19980816. FIRST USE IN COMMERCE: 19980816

IC 035. US 100 101 102. G & S: RETAIL STORE SERVICES FEATURING VARIOUS GOODS INCLUDING TOYS, CLOTHING, FURNITURE, COMPUTER SOFTWARE AND HARDWARE, SPORTING GOODS, BOOKS, STATIONERY ITEMS, KEYBOARDS, POOLS, SAFETY ITEMS, ELECTRONICS, AUDIO AND VIDEO TAPES, PLAYSETS, BATTERIES, CRAFTS, DIAPERS, CANDY, FOOD, HOBBY, SCIENCE AND EDUCATIONAL KITS, HEALTH AND BEAUTY AIDS, BICYCLES, CAR SEATS, PEDAL CARS, COLLECTIBLES AND DISHES. FIRST USE: 19981000. FIRST USE IN COMMERCE: 19981000

Mark Drawing Code

(1) TYPED DRAWING

Serial Number

75417925

Filing Date

January 15, 1998

Filed ITU

FILED AS ITU

Publication for Opposition Date

July 6, 1999

Registration Number

2280698

Registration Date

September 28, 1999

Owner Name and Address

(REGISTRANT) Geoffrey, Inc. CORPORATION DELAWARE 2002 West 14th Street
Wilmington DELAWARE 19806

Type of Mark

TRADEMARK. SERVICE MARK

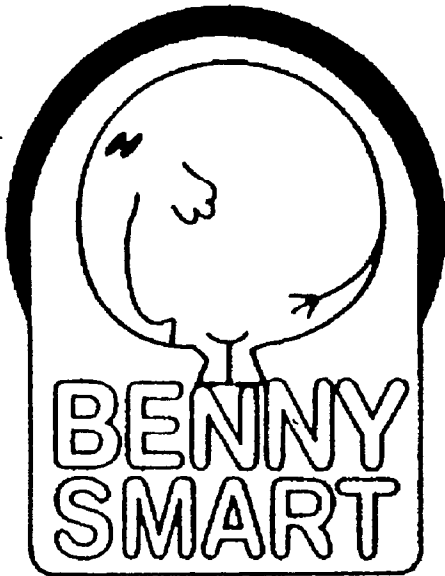
Register

PRINCIPAL

*** User: jlauterbac *** Serial Number: 75417925 ***

Live Dead Indicator
LIVE

*** Search: 17 *** Document Number: 2 ***



Mark

BENNY SMART

Goods and Services

IC 035. US 100 101 102. G & S: computerized on-line retail services in the field of children's products. FIRST USE: 19970700. FIRST USE IN COMMERCE: 19970700

IC 009. US 021 023 026 036 038. G & S: Pre-recorded videocassettes featuring children's stories and pre-recorded audio cassettes featuring children's stories and music. FIRST USE: 19950900. FIRST USE IN COMMERCE: 19950900

IC 016. US 002 005 022 023 029 037 038 050. G & S: Children's books featuring stories, children's activity books, coloring books, educational books, sing-along song books, printed teaching materials for children's development skills, stickers and paper party products, namely, printed invitations, napkins, decorations and tablecloths. FIRST USE: 19951000. FIRST USE IN COMMERCE: 19951000

IC 018. US 001 002 003 022 041. G & S: Bags, namely, backpacks and book bags. FIRST USE: 19970600. FIRST USE IN COMMERCE: 19970600

IC 025. US 022 039. G & S: Children's clothing, namely, sweatshirts, T-shirts, sleepwear, long underwear, sneakers and Halloween and masquerade costumes. FIRST USE: 19970200. FIRST USE IN COMMERCE: 19970200

IC 028. US 022 023 038 050. G & S: Children's toys, namely, bean bag dolls, plush dolls, plastic dolls, and games, jigsaw puzzles, Christmas tree ornaments, toy hair care and vanity sets, namely, combs, brushes, mirrors and pouches, toy tea sets, namely, cups, saucers and tea pots and toy vinyl play sets comprising pre-cut vinyl shapes and images for arrangement on vinyl play boards, felt play sets comprising pre-cut felt shapes and images for arrangement on felt boards, pop-up box toys and toy noise makers. FIRST USE: 19970700. FIRST USE IN COMMERCE: 19970700

*** User: jlauterbac *** Serial Number: 75372493 ***

IC 041. US 100 101 107. G & S: entertainment services, namely, the production of children's television programs, the distribution for others of children's television programs, personal appearances by children's television program characters, and providing web sites for playing multi-user games on a global computer network. FIRST USE: 19970600. FIRST USE IN COMMERCE: 19970600

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Code

020133 261125

Serial Number

75372493

Filing Date

October 14, 1997

Publication for Opposition Date

November 24, 1998

Registration Number

2223935

Registration Date

February 16, 1999

Owner Name and Address

(REGISTRANT) Hollywood Ventures Corporation CORPORATION CALIFORNIA 9255
Sunset Boulevard Suite 405 Los Angeles CALIFORNIA 900693302

Description of Mark

The mark comprises a stylized elephant immediately above the name "BENNY SMART".

Type of Mark

TRADEMARK. SERVICE MARK

Register

PRINCIPAL

Other Data

BENNY SMART is a fictional name and does not identify any particular living individual.

Live Dead Indicator

LIVE



Goods and Services

IC 028. US 022 023 038 050. G & S: games and toys for children and adults, namely board games, hand held units for playing electronic games, dolls, doll clothes, toy strollers, toy cars, toy trucks, plastic toy blocks that snap together, sand toys, namely buckets, shovels, rakes, sifters and watering cans

IC 035. US 100 101 102. G & S: advertising agency services, namely promoting the services of the retail industry through the distribution of printed and audio promotional materials and by rendering sales promotion advice

Mark Drawing Code

(2) DESIGN ONLY

Design Code

030108 030124 030126 090501

Serial Number

74496594

Filing Date

March 3, 1994

Publication for Opposition Date

March 5, 1996

Registration Number

1975670

Registration Date

May 28, 1996

*** User: jlauterbac *** Serial Number: 74496594 ***

Owner Name and Address

(REGISTRANT) GGK BASEL WERBEAGENTUR AG CORPORATION SWITZERLAND
Aeschengraben 20 CH - 4051 Basel SWITZERLAND

Assignment Recorded

ASSIGNMENT RECORDED

Section 44 Indicator

SECT44

Priority Date

September 9, 1993

Description of Mark

The lining is a feature of the mark and does not represent color.

Type of Mark

TRADEMARK. SERVICE MARK

Register

PRINCIPAL

Live Dead Indicator

LIVE

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

SERIAL NO. 75/774077 VERMONT TEDDY BEAR COMPANY, INC., THE		PAPER NO.
MARK MISCELLANEOUS DESIGN		ADDRESS: Assistant Commissioner for Trademarks 2900 Crystal Drive Arlington, VA 22202-3513 <small>If no fees are enclosed, the address should include the words "Box Responses - No Fee."</small>
ADDRESS H. JAY SPIEGEL P.O. BOX 444 MOUNT VERNON, VIRGINIA 22121	ACTION NO. 02	
FORM PTO-1525 (5-90) U.S. DEPT. OF COMM. PAT. & TM OFFICE	MAILING DATE 01/12/00 REF. NO.	

A PROPER RESPONSE TO THIS OFFICE ACTION MUST BE RECEIVED WITHIN 6 MONTHS FROM THE DATE OF THIS ACTION IN ORDER TO AVOID ABANDONMENT. *For your convenience and to ensure proper handling of your response, a label has been enclosed. Please attach it to the upper right corner of your response. If the label is not enclosed, print or type the Trademark Law Office No., Serial No., and Mark in the upper right corner of your response.*

Second Office Action

RE: Serial Number: 75/774077

This Office action incorporates by reference the refusals and requirements issued in the first Office Action dated January 6, 2000. In addition to those refusals and requirements issued in the first Office Action, the applicant should note the following potential refusal with respect to the cited prior pending application. The applicant must address all issues raised in the first Office Action and in this Office Action in a proper response which must be received by the Office within 6 months from the date of this action in order to avoid abandonment.

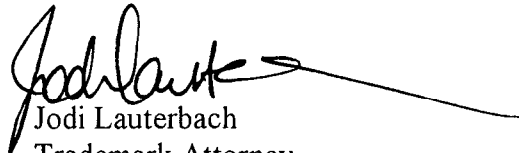
Prior Pending Application

Please note that, in addition to the aforementioned prior registration, there is also a possible likelihood of confusion under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d), between the applicant's mark and the mark in pending Application No. 75-434462. 37 C.F.R. Section 2.83. See attached. The filing date of the referenced application precedes the applicant's filing date. If the earlier-filed application matures into a registration, the examining attorney may have additional grounds for refusal of registration under Section 2(d).

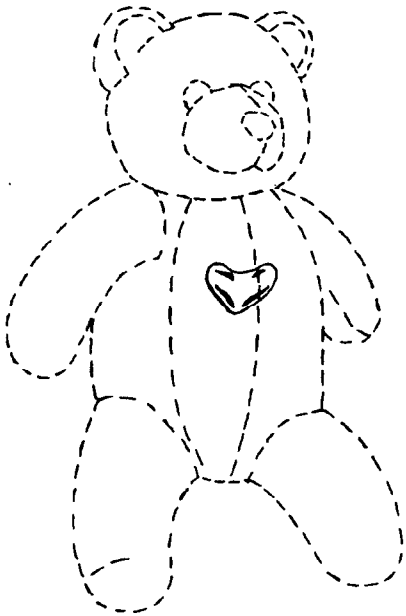
75/774077

-2-

If the applicant has any questions or needs assistance in responding to this Office action, please telephone the assigned examining attorney.

A handwritten signature in black ink, appearing to read "Jodi Lauterbach", with a long horizontal flourish extending to the right.

Jodi Lauterbach
Trademark Attorney
Law Office 107
(703) 308-9107 ext. 293



Goods and Services

IC 028. US 022 023 038 050. G & S: plush animals and stuffed toy animals

IC 035. US 100 101 102. G & S: retail store services featuring plush toy animals, stuffed toy animals, and accessories

Mark Drawing Code

(2) DESIGN ONLY

Design Code

030114 030124 210111

Serial Number

75434462

Filing Date

February 13, 1998

Filed ITU

FILED AS ITU

Publication for Opposition Date

July 13, 1999

*** User: jlauterbac *** Serial Number: 75434462 ***

Owner Name and Address

(APPLICANT) Build-A-Bear Workshop, L.L.C. LIMITED LIABILITY COMPANY
MISSOURI 1964 Innerbelt Business Center Drive St. Louis MISSOURI 63114

Description of Mark

The mark consists of a three dimensional heart shaped object. The outline of a teddy bear is used to signify the placement of a heart shaped object inside a stuffed or plush toy animal; the teddy bear design itself is not claimed as part of the mark, as the heart shaped object may be placed in any stuffed or plush toy animal. The stippling on the heart shaped object is for shading purposes only.

Type of Mark

TRADEMARK. SERVICE MARK

Register

PRINCIPAL

Live Dead Indicator

LIVE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Combined Trademark and
Service Mark Application of:

THE VERMONT TEDDY BEAR COMPANY, INC.

LAW OFFICE: 107

Serial Number: 75/774,077

EXAMINING ATTORNEY:
Jodi Lauterbach

Filed: August 12, 1999

Mark: MISCELLANEOUS DESIGN
"A THREE-DIMENSIONAL HEART
SHAPED OBJECT" -

RESPONSE

The Honorable Commissioner of
Patents and Trademarks
Washington, D.C. 20231

Sir:

In response to the outstanding Office Action dated January 12, 2000 (which is supplemental to the Office Action of January 6, 2000), for which a statutory period for response of six (6) months was given, this Response is filed to present arguments in favor of registrability.

The outstanding Office Action (incorporating by reference the Office Action of January 6, 2000) refuses registration on several grounds. First, the Examining Attorney has alleged that the mark fails to function as a Trademark or Service Mark. Second, the Examining Attorney has alleged that there is a likelihood of confusion vis.a.vis two prior registrations. Additionally, the

Examining Attorney has alleged that certain specimens filed with the application are unacceptable to support Trademark use. Finally, the Examining Attorney makes note of earlier filed application Serial No. 75/434,462. By this Response, Applicant respectfully requests that the Examining Attorney mail an Office Action rendering the position of the U.S. Patent and Trademark Office in this case completely consistent with the position that the U.S. Patent and Trademark Office has taken in co-pending application Serial No. 75/434,462. That application was filed based upon an alleged bona-fide "intention to use" the mark. The mark claimed in co-pending application Serial No. 75/434,462 is identical in all respects to the mark claimed herein. In fact, Applicant herein has opposed registration of the mark sought by Applicant Build-A-Bear Workshop, LLC (Build-A-Bear) in the co-pending application on the ground that Applicant herein is the first to use the mark. Settlement negotiations are ongoing at this time, although their outcome cannot yet be predicted.

In the co-pending application of Build-A-Bear, the Examining Attorney merely required an amendment of the recitation of services which resulted in passing of the application to publication for opposition with the Notice of Publication being mailed June 11, 1999.

During a telephone conversation between the undersigned and the Examining Attorney herein, Ms. Jodi Lauterbach, Ms. Lauterbach explained to the undersigned that the difference between this

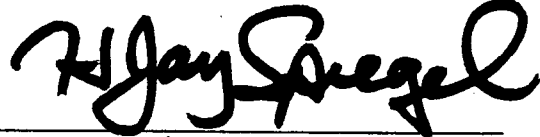
application and the Build-A-Bear application is that the Build-A-Bear application was filed based upon an alleged bona-fide "intention to use" whereas this application was filed alleging "actual use". Ms. Lauterbach informed the undersigned that should Build-A-Bear present specimens like the specimens presented by Applicant herein, registration would surely be refused based upon the same allegation set forth herein, to wit, that the mark does not function as a Trademark. One of the specimens presented by Applicant with the filing of the application was a sample of the heart that is placed inside the teddy bear during its manufacture. It is not clear from the outstanding Office Action whether this heart was actually received by the Examining Attorney or was lost. However, in reviewing the identification of goods (which is substantially identical to the identification of goods in the Build-A-Bear application), it should be clear that the specimen of Trademark use would consist of the heart itself. There can be no question that in the Build-A-Bear application the specimen would be essentially the same, a heart shaped object designed to be placed within the chest of a stuffed animal. Under these circumstances, Applicant must respectfully submit that the U.S. Patent and Trademark Office is taking inconsistent positions by passing the Build-A-Bear application to publication for opposition while refusing registration of the instant application on the allegation that the placement of a heart inside the chest of a stuffed animal does not function as a Trademark.

Given the prosecution history of the Build-A-Bear application and in light of the remarks set forth hereinabove, it is respectfully requested that the Examining Attorney withdraw all grounds of refusal and suspend further prosecution in this application pending the outcome of the opposition proceeding filed by Applicant herein seeking to prevent registration of the Build-A-Bear application. At such time as the opposition proceeding is resolved, if such resolution is in Applicant's favor, substitute specimens will be presented.

If the Examining Attorney has any questions concerning this Response, the Examining Attorney is respectfully requested to telephone Applicant's Attorney locally at (703) 619-0101 so that a discussion of any outstanding issues may be had.

Respectfully submitted,

H. JAY SPIEGEL & ASSOCIATES

A handwritten signature in black ink, reading "H. Jay Spiegel". The signature is written in a cursive, flowing style. The "H" is large and stylized, and the "J" and "S" are also prominent. The signature is written over a horizontal line.

H. Jay Spiegel
Attorney for Applicant
Registration No. 30,722

H. JAY SPIEGEL & ASSOCIATES
P.O. Box 444
Mount Vernon, Virginia 22121
(703) 619-0101


Certificate of Mailing under 37 CFR 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

Box RESPONSES NO FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

on July 7, 2000

Date


Signature

Theresa R. Godfrey

Typed or printed name of person signing Certificate

Note: Each paper must have its own certificate of mailing, or this certificate must identify each submitted paper.

Serial No. 75/774,077

Filed: August 12, 1999

Mark: A THREE-DIMENSIONAL HEART SHAPED OBJECT"
MISCELLANEOUS DESIGN

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO. 75/774077 VERMONT TEDDY BEAR COMPANY, INC., THE <hr/> MARK MISCELLANEOUS DESIGN <hr/> <table style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> ADDRESS H. JAY SPIEGEL P.O. BOX 444 MOUNT VERNON, VIRGINIA 22121 </td> <td style="width: 50%; vertical-align: top;"> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">ACTION NO. 03</td> </tr> <tr> <td style="padding: 2px;">MAILING DATE 09/01/00</td> </tr> <tr> <td style="padding: 2px;">REF. NO.</td> </tr> </table> </td> </tr> </table>		ADDRESS H. JAY SPIEGEL P.O. BOX 444 MOUNT VERNON, VIRGINIA 22121	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">ACTION NO. 03</td> </tr> <tr> <td style="padding: 2px;">MAILING DATE 09/01/00</td> </tr> <tr> <td style="padding: 2px;">REF. NO.</td> </tr> </table>	ACTION NO. 03	MAILING DATE 09/01/00	REF. NO.	PAPER NO. <hr/> ADDRESS: Commissioner for Trademarks 2900 Crystal Drive Arlington, VA 22202-3513 www.uspto.gov <small>If no fees are enclosed, the address should include the words "Box Responses - No Fee."</small>
ADDRESS H. JAY SPIEGEL P.O. BOX 444 MOUNT VERNON, VIRGINIA 22121	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">ACTION NO. 03</td> </tr> <tr> <td style="padding: 2px;">MAILING DATE 09/01/00</td> </tr> <tr> <td style="padding: 2px;">REF. NO.</td> </tr> </table>	ACTION NO. 03	MAILING DATE 09/01/00	REF. NO.			
ACTION NO. 03							
MAILING DATE 09/01/00							
REF. NO.							
<div style="display: flex; justify-content: space-between;"> FORM PTO-1525 (5-90) U.S. DEPT. OF COMM. PAT. & TM OFFICE </div>		<hr/> <small>Please provide in all correspondence:</small> <ol style="list-style-type: none"> 1. Filing Date, serial number, mark and Applicant's name. 2. Mailing date of this Office action. 3. Examining Attorney's name and Law Office number. 4. Your telephone number and ZIP code. 					

THIRD OFFICE ACTION
Notice of Suspension

RE: Serial Number: 75/774077

This letter responds to the applicant's communication filed on July 7, 2000. The refusals based on Trademark Act Sections 1, 2, 3 and 45 and 2(d) and the requirements for substitute specimens and an amended identification of goods are continued. Action on this application is suspended pending the disposition of Application Serial No. 75-434462.

The applicant did not address any of the refusals or requirements. Rather, the applicant merely stated that the mark in the prior pending application "is identical in all respects to the mark claimed herein," and as such, this application should be passed to publication as well. The applicant should note that previous decisions by examining attorneys in approving other marks are without evidentiary value and are not binding upon the agency or the Board. TMEP Section 1207.01(c)(vii). *In re National Novice Hockey League, Inc.*, 222 USPQ 638, 641 (TTAB 1984). Each case must be decided on its own merits. Furthermore, the applications are, in fact, very different from each other. The prior pending application was based on intent to use. Therefore, there were no specimens filed, and as such, no specimens refusal. Likewise, a refusal to register based on a failure to function as a trademark would not have been issued given that the prior pending application is an intent to use application. Such a refusal would not be issued until an allegation of use has been filed and the specimens submitted therewith indicate that the proposed mark fails to function as a trademark. Lastly, the identification of goods and services is also different. As such, the requirements for an amended identification of goods and services would be different for each case. In sum, the applications are very different from each other and there has been no inconsistent positions taken by the Office.

Fails to Function as a Mark

The examining attorney refuses registration, because the proposed mark does not function as a trademark nor as a service mark. Trademark Act Sections 1, 2, 3 and 45, 15 U.S.C. Sections 1051, 1052, 1053 and 1127. It neither identifies and distinguishes the goods and services of the applicant from those of others nor indicates their source. *In re Moody's Investors Service Inc.*, 13 USPQ2d 2043 (TTAB 1989); *In re Signal Companies, Inc.*, 228 USPQ 956 (TTAB 1986); *In re Hughes Aircraft Co.*, 222 USPQ 263 (TTAB 1984); TMEP sections 1301.02(a). First and foremost, none of the specimens even show the proposed mark. Furthermore, the instructions on the back of the catalog and on the blueprint indicate that the proposed mark is used as one of the pieces of a kit for making a teddy bear and that it is not used as a trademark to identify the source of the applicant's goods or services. It is merely, a body part, like one of the bears legs or arms, which is used to build a bear. As such, it would not be perceived by purchasing public as mark which identifies and distinguishes source of the applicant's goods or services. In sum, the proposed mark is not registrable because its usage as described in specimens of record fails to impart any commercial impression as trademark or service mark.

Likelihood of Confusion

The examining attorney refuses registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d), because the applicant's proposed mark, when used on or in connection with the identified goods, so resembles the mark in U.S. Registration Nos. 1744649 and 1975529 as to be likely to cause confusion, to cause mistake, or to deceive. TMEP section 1207. See the enclosed registrations.

The examining attorney must analyze each case in two steps to determine whether there is a likelihood of confusion. First, the examining attorney must look at the marks themselves for similarities in appearance, sound, connotation and commercial impression. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Second, the examining attorney must compare the goods or services to determine if they are related or if the activities surrounding their marketing are such that confusion as to origin is likely. *In re August Storck KG*, 218 USPQ 823 (TTAB 1983); *In re International Telephone and Telegraph Corp.*, 197 USPQ 910 (TTAB 1978); *Guardian Products Co., v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978).

U.S. Registration No. 1744649:

The registered mark consists of a faceted heart shaped object simulating a gemstone placed in the navel of a troll doll and the applicant is seeking to register a mark that consist of a three dimensional heart shaped object that is placed somewhere inside a bear. Clearly, both the applicant and the registrant have three dimensional heart shaped objects placed on or in the toys. Furthermore, the applicant has not identified a specific location of its heart, and as such, it could possibly be put inside the navel of one of the applicant's plush animals and stuffed toy animals. In addition to the marks being confusingly similar, the goods and services are highly related. The registrant's goods are "dolls, stuffed and plastic." The applicant's goods are "plush animals and stuffed toy animals" and "blueprints and catalogs" and the applicant's services are "retail store services and mail order services featuring plush toy animals, stuffed toy animals, and accessories therefor." The goods and services are related in that they are the types of goods and services that originate from the same source under the same mark. The examining attorney encloses third party registrations in which the applicant's goods and services and the registrant's goods emanate from a single source under the same mark as evidence of the relatedness of the parties' goods and services. See attached. Moreover, the goods and services are the types of goods and services that are directed to the same class of purchasers and flow in the same channels of trade. In sum, given that the marks are confusingly similar and that the goods and services are highly related, there is a likelihood of confusion.

U.S. Registration No. 1975529:

The registered mark consists of a heart positioned on the lower front portion of a doll's dress and the applicant is seeking to register a mark that consist of a three dimensional heart shaped object that is placed somewhere inside a bear. Clearly, both the applicant and the registrant have three dimensional heart shaped objects placed on or in the toys. Furthermore, the applicant has not identified a specific location of its heart, and as such, it could possibly be put anywhere in the applicant's plush animals and stuffed toy animals. The applicant's catalog even shows a drawing of one of its bears wearing a heart on a chain around his neck. In addition to the marks being confusingly similar, the goods and services are highly related. The registrant's goods are "dolls." The applicant's goods are "plush animals and stuffed toy animals" and "blueprints and catalogs" and the applicant's services are "retail store services and mail order services featuring plush toy animals, stuffed toy animals, and accessories therefor." The goods and services are related in that they are the types of goods and services that originate from the same source under the same mark. The examining attorney encloses third party registrations in which the applicant's goods and services and the registrant's goods emanate from a single source under the same mark as evidence of the relatedness of the parties' goods and services. See attached. Moreover, the goods and services are the types of goods and services that are directed to the same class of purchasers and flow in the same channels of trade. In sum, given that the marks are confusingly similar and that the goods and services are highly related, there is a likelihood of confusion.

Specimens*Blueprints:*

The blueprint specimens are unacceptable as evidence of actual trademark use for the goods in International Class 28, because they do not show the proposed mark as it is used on the "plush animals and stuffed toy animals." Any material whose function is merely to tell the prospective purchaser about the goods, or to promote the sale of the goods, is unacceptable to support trademark use. Similarly, information or instruction sheets like the applicant's blueprints are generally not acceptable for showing trademark use. *In re Schiapparelli Searle*, 26 USPQ2d 1520 (TTAB 1993); *In re Drilco Industrial Inc.*, 15 USPQ2d 1671 (TTAB 1990); *In re ITT Rayonier Inc.*, 208 USPQ 86 (TTAB 1980); *In re Bright of America, Inc.*, 205 USPQ 63 (TTAB 1979). Furthermore, the proposed mark does not appear anywhere on the specimens. The applicant must submit a stuffed or plush toy specimen that shows a three dimensional heart shaped object that is placed inside a stuffed or plush toy animal. The applicant should note that a drawing which merely illustrates what the mark looks like and is not actually used on or in connection with the goods in commerce is not acceptable.

The blueprint specimens are also unacceptable as evidence of actual trademark use for the "blueprints and catalogs" in International Class 16, because the proposed mark does not appear anywhere on the blueprint specimens. The applicant must submit a blue print or catalog specimen that shows a three dimensional heart shaped object that is placed inside a stuffed or plush toy animal on the goods. The applicant should note that a drawing which merely illustrates what the mark looks like and is not actually used on or in connection with the goods in commerce is not acceptable.

The blueprint specimens are also unacceptable to show use of the proposed mark in connection with the applicant's services in International Class 35, because they are printed publications that do not show the mark used in the sale or advertising of the "retail store services and mail order services." Trademark Act Section 45, 15 U.S.C. Section 1127; *In re Universal Oil Products Co.*, 476 F.2d 653, 177 USPQ 456 (CCPA 1973); TMEP section 1301.02. The specimen must show use of the mark "in the sale or advertising of services," as such, a printed blueprint containing instructions on how to assembly a stuffed bear is unacceptable to show service mark use. Furthermore, the proposed mark does not appear anywhere on the specimens. The applicant must submit an advertising specimen that shows a three dimensional heart shaped object that is placed inside a stuffed or plush toy animal. The applicant

should note that a drawing which merely illustrates what the mark looks like and is not actually used in connection with the services in commerce is not acceptable.

Catalog Covers:

The catalog covers are unacceptable as evidence of actual trademark use for the goods in International Class 28, because they are merely catalogs which serve to advertise the applicant's goods. Advertising material is generally not acceptable as specimens for goods. Any material whose function is merely to tell the prospective purchaser about the goods, or to promote the sale of the goods, is unacceptable to support trademark use. Furthermore, the proposed mark does not appear anywhere on the specimens. As stated above, the applicant must submit a stuffed or plush toy specimen that shows a three dimensional heart shaped object that is placed inside a stuffed or plush toy animal. The applicant should note that a drawing which merely illustrates what the mark looks like and is not actually used on or in connection with the goods in commerce is not acceptable.

The catalog covers are unacceptable as evidence of actual trademark use for the "blueprints and catalogs" in International Class 16, because the proposed mark does not appear anywhere on the catalog cover. As stated above, the applicant must submit a blue print or catalog specimen that shows a three dimensional heart shaped object that is placed inside a stuffed or plush toy animal on the goods. The applicant should note that a drawing which merely illustrates what the mark looks like and is not actually used on or in connection with the goods in commerce is not acceptable.

The catalog covers are unacceptable as evidence of actual trademark use for the "retail store services and mail order services" in International Class 35, because the proposed mark does not appear anywhere on the catalog cover. As stated above, the applicant must submit an advertising specimen that shows a three dimensional heart shaped object that is placed inside a stuffed or plush toy animal. The applicant should note that a drawing which merely illustrates what the mark looks like and is not actually used in connection with the services in commerce is not acceptable.

Heart Placed Inside Teddy Bear:

The applicant indicates in its response to the first two Office Actions, that it also submitted "a sample of the heart that is placed inside the teddy bear during its manufacture." This specimen was never received by the Office.

The applicant should note that the heart specimen would not be acceptable as evidence of actual trademark use for the goods in International Class 28, because they would not show the proposed mark as it is used on the "plush animals and stuffed toy animals." Furthermore, they would not show the proposed mark as functioning as a trademark. It would neither identify nor distinguish the goods of the applicant from those of others nor indicate their source. *In re Moody's Investors Service Inc.*, 13 USPQ2d 2043 (TTAB 1989); *In re Signal Companies, Inc.*, 228 USPQ 956 (TTAB 1986); *In re Hughes Aircraft Co.*, 222 USPQ 263 (TTAB 1984); TMEP sections 1301.02(a). According to the instructions on the back of the catalog and on the blueprint, the proposed mark is used as one of the pieces of a kit for making a teddy bear and that it is not used as a trademark to identify the source of the applicant's goods. It is merely, a body part, like one of the bears legs or arms, which is used to build a bear. As such, it would not be used on the goods as a trademark.

The heart specimens would also be unacceptable as evidence of actual trademark use for the "blueprints and catalogs" in International Class 16, because they would not show use of the proposed mark on blueprints and catalogs. Specimens showing trademark use for goods must show the mark on the goods, containers, tags, labels or displays associated with the goods. TMEP Section 905.04. A heart

that is inserted in a bear would not show the proposed mark as it is used on the blueprints or catalogs or on the containers, tags, labels or displays associated with the blueprints and catalogs.

The heart specimens would also be unacceptable to show use of the proposed mark in connection with the applicant's services in International Class 35, because they would not show the mark used in the sale or advertising of the "retail store services and mail order services." Trademark Act Section 45, 15 U.S.C. Section 1127; *In re Universal Oil Products Co.*, 476 F.2d 653, 177 USPQ 456 (CCPA 1973); TMEP section 1301.02.

In sum, the applicant must submit a substitute specimen for each class of goods and services showing the proposed mark as used in commerce on the goods in International Classes 28 and 16 and showing the proposed mark as used in commerce in the sale or advertisement of the applicant's services in International Class 35. Examples of acceptable specimens for the goods in International Classes 28 and 16 are tags, labels, instruction manuals, containers or photographs that show the mark on the goods or packaging. Examples of acceptable specimens for the services in International Class 35 are signs, photographs, brochures or advertisements that show the mark used in the sale or advertising of the services. TMEP section 1301.04. The applicant must verify, with an affidavit or a declaration under 37 C.F.R. Section 2.20, that the substitute specimens were in use in commerce at least as early as the filing date of the application. *Jim Dandy Co. v. Siler City Mills, Inc.*, 209 USPQ 764 (TTAB 1981); 37 C.F.R. Section 2.59(a); TMEP section 905.10. The examining attorney encloses an example of a properly worded declaration supporting the substitute specimens below.

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that the facts set forth in this response are true; all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true. The substitute specimens were in use in commerce at least as early as the filing date of the application. 37 C.F.R. Section 2.59(a); TMEP section 905.10.

(Signature)

(Print or Type Name and Position)

(Date)

Identification of Goods

The identification of goods is unacceptable because it is indefinite and it identifies goods in other classes. TMEP section 804. The Trademark Act requires that the identification of goods be specific, clear, accurate, definite and as concise as possible. TMEP 804.01. Therefore, the applicant must make the following clarifications.

- (1) The applicant's identification of goods is entered into the record as: "plush animals and stuffed toy animals" in International Class 28, "retail store services and mail order services featuring plush toy animals, stuffed toy animals, and accessories therefor" in International Class 35 and "blueprints and catalogs" in International Class 16. Therefore, applicant must indicate the subject matter of the catalogs and classify the blueprints and the catalogs in International Class 16, e.g., "blueprints and catalogs featuring plush toy animals, stuffed toy animals, and accessories therefor in International Class 16." If the applicant did not intend to include the blueprints and catalogs in the identification,

then the applicant must so indicate in its response and request that they be deleted from the identification.

- (2) The applicant must expressly indicate that the "plush animals" are toys, e.g., "plush toy animals in International Class 28."

Please note that, while an application may be amended to clarify or limit the identification, additions to the identification are not permitted. 37 C.F.R. Section 2.71(a); TMEP section 804.09. Therefore, the applicant may not amend to include any goods or services that are not within the scope of the goods and services recited in the present identification.

Multiple Class Application

If the applicant adds another class to this two class application when clarifying the identification, the applicant must comply with each of the following:

- (1) The applicant must specifically identify the goods and services in each class and list the goods and services by international class with the classes listed in ascending numerical order. TMEP section 1113.01.
- (2) The applicant must submit a filing fee for each international class of goods and services not covered by the fee already paid. 37 C.F.R. Sections 2.6(a)(1) and 2.86(b); TMEP sections 810.01 and 1113.01. Currently, the fee for filing a trademark application is \$245.00 for each class of goods or services. *Effective January 10, 2000, the fee for filing a trademark application is \$325 for each class.* This applies to classes added to pending applications as well as to new applications filed on or after that date.
- (3) The applicant must submit either:
 - (a) dates of first use and first use in commerce in each class and one specimen for each class. The dates of use must be at least as early as the filing date of this application. 37 C.F.R. Sections 2.34(a)(1) and 2.86(a), and the specimen(s) must have been in use in commerce at least as early as the filing date of the application, or
 - (b) a statement of a bona fide intention to use the mark in commerce on or in connection with all the goods or services specified in each class.

The applicant must submit an affidavit or a declaration under 37 C.F.R. Section 2.20 signed by the applicant to verify (3) above. 37 C.F.R. Sections 2.59(a) and 2.71(c).

Prior Pending Application

Since applicant's effective filing date is subsequent to the effective filing date of the above-identified application, the latter, if and when it registers, may be cited against this application. See 37 C.F.R. §2.83. A copy of information relevant to this pending application was sent previously.

The applicant may request that the application be removed from suspension by presenting arguments related to the potential conflict between the relevant applications or other arguments related the ground for suspension. The applicant's election to present or not to present arguments at this time will not affect the applicant's right to present arguments later.

The applicant indicates in its response to the two Office Actions, that it is in settlement negotiations with the owner of the prior pending application. If an acceptable consent agreement is submitted for the record, then the potential likelihood of confusion refusal with respect to the prior pending application will be withdrawn. The applicant should note, however, that such an agreement would not resolve the outstanding refusals based on a failure to function as a mark and a likelihood of confusion between the applicant's proposed mark and the marks in the cited registrations nor the outstanding requirements for substitute specimens and an amended identification goods.

As stated above, action on this application is *SUSPENDED* pending the disposition of Application Serial No. 75-434462.

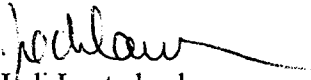

Jodi Lauterbach
Trademark Attorney
Law Office 107
(703) 308-9107 ext. 293

EXHIBIT 7

UNITED STATES PATENT AND TRADEMARK OFFICE

[Home](#)[Index](#)[Search](#)[System
Alerts](#)[eBusiness
Center](#)[News &
Notices](#)[Contact Us](#)**Trademark Electronic Search System(Tess)***TESS was last updated on Sat Jul 17 04:34:23 EDT 2004*[PTO HOME](#)[TRADEMARK](#)[TESS HOME](#)[NEW USER](#)[SIGNATURE](#)[FREE FORM](#)[BROWSE DB](#)[BOTTOM](#)[HELP](#)[Logout](#)

Please logout when you are done to release system resources allocated for you.

Record 1 out of 1**Check Status***(TARR contains current status, correspondence address and attorney of record for this mark. Use the "Back" button of the Internet Browser to return to TESS)*

Goods and Services	(CANCELLED) IC 028. US 022. G & S: dolls, stuffed and plastic. FIRST USE: 19910628. FIRST USE IN COMMERCE: 19910910
Mark Drawing Code	(2) DESIGN ONLY
Design Search Code	021101 210111 210112
Serial Number	74187583
Filing Date	July 18, 1991
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	October 13, 1992
Registration Number	1744649
Registration Date	January 5, 1993
Owner	(REGISTRANT) Ace Novelty Company, Inc. CORPORATION WASHINGTON 13434 N.E. 16th Street Box 97303 Bellevue WASHINGTON 98009 (LAST LISTED OWNER) LCD INTERNATIONAL, L.L.C. RHODE ISLAND

LIMITED LIABILITY COMPANY ASSIGNEE OF RHODE ISLAND 226
BELLEVUE AVENUE NEWPORT RHODE ISLAND 02840

Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	ROBERTA JACOBS-MEADWAY
Description of Mark	The mark consists of a faceted faced object simulating a gemstone placed in the navel of a troll doll. The broken line representation of the troll doll itself is not part of the mark, but merely shows the position of the mark on the goods.
Type of Mark	TRADEMARK
Register	PRINCIPAL-2(F)
Affidavit Text	SECT 15. SECT 8 (6-YR).
Live/Dead Indicator	DEAD
Cancellation Date	October 11, 2003

PTO HOME	TRADEMARK	TESS HOME	NEW USER	SIGNATURES	FREE FORM	BROWSE DB	TOP	HELP
--------------------------	---------------------------	---------------------------	--------------------------	----------------------------	---------------------------	---------------------------	---------------------	----------------------

[HOME](#) | [INDEX](#) | [SEARCH](#) | [SYSTEM ALERTS](#) | [BUSINESS CENTER](#) | [NEWS&NOTICES](#) |
[CONTACT US](#) | [PRIVACY STATEMENT](#)

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2004-07-19 19:39:15 ET

Serial Number: 74187583 Assignment Information

Registration Number: 1744649 Assignment Information

Mark



Standard Character claim: No

Current Status: Registration canceled under Section 8.

Date of Status: 2003-10-11

Filing Date: 1991-07-18

Transformed into a National Application: No

Registration Date: 1993-01-05

Register: Principal

Law Office Assigned: LAW OFFICE 12

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 900 -Warehouse (Newington)

Date In Location: 1999-05-20

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. LCD INTERNATIONAL, L.L.C.

Address:

LCD INTERNATIONAL, L.L.C.
226 BELLEVUE AVENUE
NEWPORT, RI 02840
United States

Legal Entity Type: RHODE ISLAND LIMITED LIABILITY COMPANY
State or Country Where Organized: Rhode Island

GOODS AND/OR SERVICES

International Class: 028
dolls, stuffed and plastic
First Use Date: 1991-06-28
First Use in Commerce Date: 1991-09-10

Basis: 1(a)

ADDITIONAL INFORMATION

Description of Mark: The mark consists of a faceted faced object simulating a gemstone placed in the navel of a troll doll. The broken line representation of the troll doll itself is not part of the mark, but merely shows the position of the mark on the goods.

Section 2(f)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2003-10-11 - Canceled Section 8 (10-year)/Expired Section 9
1999-04-16 - Section 8 (6-year) accepted & Section 15 acknowledged
1998-11-17 - Section 8 (6-year) and Section 15 Filed
1993-01-05 - Registered - Principal Register
1992-10-13 - Published for opposition
1992-09-11 - Notice of publication
1992-07-16 - Approved for Pub - Principal Register (Initial exam)
1992-07-16 - Amendment to Use approved
1992-05-21 - Correspondence Received In Law Office
1992-05-08 - Disapproval - Amendment to use mailed
1992-03-25 - Amendment to use processing complete

1992-02-07 - Amendment to Use filed
1992-03-12 - Previous allowance count withdrawn
1992-03-09 - Approved for Pub - Principal Register (Initial exam)
1992-02-05 - Correspondence Received In Law Office
1991-12-24 - Non-final action mailed
1991-11-21 - Previous allowance count withdrawn
1991-10-24 - Approved for Pub - Principal Register (Initial exam)
1991-10-21 - Examiner's amendment mailed
1991-10-17 - Case file assigned to examining attorney
1991-09-27 - Case file assigned to examining attorney

CONTACT INFORMATION

Correspondent

ROBERTA JACOBS-MEADWAY (Attorney of record)

ROBERTA JACOBS-MEADWAY
PANITCH SCHWARZE JACOBS & NADEL PC
ONE COMMERCE SQ
2005 MARKET ST 22ND FL
PHILADELPHIA PA 19103-7086

EXHIBIT 8

UNITED STATES PATENT AND TRADEMARK OFFICE

[Home](#)[Index](#)[Search](#)[System
Alerts](#)[eBusiness
Center](#)[News &
Notices](#)[Contact Us](#)**Trademark Electronic Search System(Tess)***TESS was last updated on Sat Jul 17 04:34:23 EDT 2004*[PTO HOME](#) [TRADEMARK](#) [TESS HOME](#) [NEW USER](#) [SIGNUP HERE](#) [FREE FORM](#) [Download Doc](#) [BOTTOM](#) [HELP](#)[Logout](#) | Please logout when you are done to release system resources allocated for you.**Record 1 out of 1****Check Status***(TARR contains current status, correspondence address and attorney of record for this mark. Use the "Back" button of the Internet Browser to return to TESS)*

Goods and Services	(CANCELLED) IC 028. US 022 023 038 050. G & S: dolls. FIRST USE: 19940301. FIRST USE IN COMMERCE: 19940301
Mark Drawing Code	(2) DESIGN ONLY
Design Search Code	021101
Serial Number	74677363
Filing Date	May 19, 1995
Current Filing Basis	1A
Original Filing Basis	1A
Supplemental Register Date	January 23, 1996
Registration Number	1975529
Registration Date	May 21, 1996
Owner	(REGISTRANT) Dever, Louise DBA TLc Dever INDIVIDUAL UNITED STATES 54747 Highland Drive Eau Claire MICHIGAN 49111
Attorney of Record	Lawrence R. Williams II

Description of Mark The mark consists of a heart positioned on the lower front portion of the doll's dress. The dotted outline of the lower front portion of the doll's dress is not a part of the mark but is merely intended to show the position of the mark.

Type of Mark TRADEMARK

Register SUPPLEMENTAL

Live/Dead Indicator DEAD

Cancellation Date February 22, 2003

[PTO HOME](#) [TRADEMARK](#) [TESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [HOW TO USE](#) [TOP](#) [HELP](#)

[HOME](#) | [INDEX](#) | [SEARCH](#) | [SYSTEM ALERTS](#) | [BUSINESS CENTER](#) | [NEWS&NOTICES](#) | [CONTACT US](#) | [PRIVACY STATEMENT](#)

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2004-07-19 19:41:09 ET

Serial Number: 74677363

Registration Number: 1975529

Mark



Standard Character claim: No

Current Status: Registration canceled under Section 8.

Date of Status: 2003-02-22

Filing Date: 1995-05-19

Transformed into a National Application: No

Registration Date: 1996-05-21

Register: Supplemental

Law Office Assigned: TMEG Law Office 106

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 900 -Warehouse (Newington)

Date In Location: 1996-05-29

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Dever, Louise

Address:

Dever, Louise
54747 Highland Drive
Eau Claire, MI 49111
United States

Legal Entity Type: Individual
Country of Citizenship: United States

GOODS AND/OR SERVICES

International Class: 028
dolls
First Use Date: 1994-03-01
First Use in Commerce Date: 1994-03-01

Basis: 1(a)

ADDITIONAL INFORMATION

Description of Mark: The mark consists of a heart positioned on the lower front portion of the doll's dress. The dotted outline of the lower front portion of the doll's dress is not a part of the mark but is merely intended to show the position of the mark.

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2003-02-22 - Canceled Section 8 (6-year)
1996-05-21 - Registered - Supplemental Register
1996-03-11 - APPROVED FOR REGISTRATION SUPPLEMENTAL REGISTER
1996-01-23 - Correspondence Received In Law Office
1996-01-23 - Correspondence Received In Law Office
1995-11-02 - Non-final action mailed
1995-10-23 - Case file assigned to examining attorney

CONTACT INFORMATION

Correspondent
Lawrence R. Williams II (Attorney of record)

LAWRENCE R. WILLIAMS II
BAKER & DANIELS
205 W. JEFFERSON BLVD., SUITE 205
SOUTH BEND, IN 46601

United States

IN THE MATTER OF:

Vermont Teddy Bear Co.
vs.
Build-A-Bear Workshop, Inc.

Cause No. 115,198

Deposition of Maxine Clark
6/22/2004

Gore Perry Gateway & Lipa Reporting
515 Olive Street
Suite 700
St. Louis, MO 63101

In The United States Patent And Trademark Office
Before The Trademark Trial And Appeal Board

The Vermont Teddy Bear Company, Inc.,

Opposer,

vs. NO. 115,198

Build-A-Bear Workshop, Inc.,

Applicant

Deposition of MAXINE CLARK, taken on
behalf of the Opposer, at the offices of Blackwell
Sanders Peper Martin LLP, 720 Olive Street, Suite
2400, in the City of St. Louis, State of Missouri,
on the 22nd day of June, 2004, before Mary L.
Peppenhorst, CCR, CSR (MO, IL #084-003856) and
Notary Public.

1 APPEARANCES OF COUNSEL:

2 FOR THE OPPOSER:

3 Mr. H. Jay Spiegel

4 H. Jay Spiegel & Associates

5 P.O. Box 11

6 Mount Vernon, VA 22121

7 (703) 619-0101

8 jayspiegel@aol.com

9
10 FOR THE APPLICANT:

11 Ms. Michelle W. Alvey

12 Blackwell Sanders Peper Martin LLP

13 720 Olive Street, Suite 2400

14 St. Louis, MO 63101

15 (314) 345-6000

1 INDEX

2 Page

3 WITNESS: Maxine Clark

4 EXAMINATION

5 QUESTIONS BY

6 By Mr. Spiegel

5

7

8 EXHIBITS

9 Exhibit 1 Vermont Teddy Bear Catalogue 27

10 Exhibit 2 Amended Supp. Response to 37

11 Interrogatories

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 Maxine Clark,
2 of lawful age, having been first duly sworn to
3 testify the truth, the whole truth, and
4 nothing but the truth in the case aforesaid,
5 deposes and says in reply to oral
6 interrogatories, propounded as follows, to-wit:

7 EXAMINATION

8 QUESTIONS BY MR. SPIEGEL:

9 Q: Please state your name.

10 A: Maxine Clark.

11 Q: What is your address?

12 A: 12 Green Briar, St. Louis, Missouri, 63124.

13 Q: Are you taking any medication that would
14 preclude you from being able to answer my questions
15 truthfully today?

16 A: No.

17 Q: I'd like to explain to you how I'm going to
18 proceed today. I'll ask you a series of questions
19 and after each question I'll give you as much time
20 as you need to provide your answer. If for any
21 reason you don't understand my question, please let
22 me know and I'll do my best to clarify the question.
23 Your lawyer is permitted to make a couple of kinds
24 of objections to my questions, objections concerning
25 privilege and objections to the form. And she may

1 also feel the need to make an objection concerning
2 the scope of the questions I may ask you on the
3 grounds that perhaps Ms. Alvey might think that my
4 question goes outside the scope of the subjects to
5 which I'm permitted to question you today.

6 As you may know, this deposition is not your
7 complete deposition. It is limited to the subjects
8 that the Trademark Trial and Appeal Board permitted
9 me to question you on so that the Vermont Teddy Bear
10 Co, the opposer, will be able to respond to a motion
11 for summary judgement that the Build-A-Bear
12 Workshop, the applicant, filed.

13 And maybe it would be appropriate to read
14 from my declaration the exact paragraph, part and
15 part of the paragraph, that gives that scope. Let
16 me see if I can find that.

17 MS. ALVEY: I have it here if you want to
18 use mine.

19 MR. SPIEGEL: It's right here.

20 Q: (By Mr. Spiegel) Information concerning the
21 precise circumstances under which applicant
22 allegedly created their mark, adopted it and began
23 to use it. In this regard opposer believes that
24 applicant knew of opposer's use of the heart in the
25 bear mark at the time when applicant began using the

1 heart in the bear mark itself. And that's good
2 enough. I then cite a case. And that's the scope
3 of today's deposition.

4 Depending upon what happens with the motion
5 for summary judgement sometime in the future there
6 may be an additional deposition.

7 MR. SPIEGEL: From a procedural standpoint,
8 would you suggest we adjourn the deposition or since
9 we have the understanding that we have a right to
10 another one we can just terminate today's and
11 re-notice it in the future?

12 MS. ALVEY: I'm not going to say we have an
13 understanding about a future deposition. I think
14 today it's restricted to what you said. We'll
15 conclude and discuss it depending on what happens
16 with the discovery motion. We can save that for
17 another day.

18 Q: (By Mr. Spiegel) Okay. Where are you
19 employed?

20 A: I'm employed by Build-a-Bear Workshop.

21 Q: And what is your title at Build-A-Bear
22 Workshop?

23 A: Founder and chief executive bear.

24 Q: Now what state is Build-A-Bear Workshop
25 incorporated in?

1 A: Delaware.

2 Q: Does Delaware understand what you mean when
3 you say chief executive bear?

4 A: I don't know.

5 Q: Well, what does that mean?

6 A: I'm the chief executive officer of a bear
7 company and I chose the title bear instead of
8 officer.

9 Q: Please describe your duties at Build-a-Bear
10 Workshop?

11 A: I'm the executive in charge -- ultimately in
12 charge of the entire organization. I have
13 merchandising, marketing and sales promotion and
14 stores report to me. As the chief executive bear
15 everyone ultimately reports to me. All the
16 financial decisions are under my jurisdiction as are
17 merchandising decisions, marketing decisions.
18 Although other people report to me and make
19 recommendations, I ultimately approve or disapprove
20 of the general running of the business.

21 Q: Are you the only owner of Build-a-Bear
22 Workshop?

23 A: No.

24 Q: Who are the other owners?

25 A: Institutional investors who are partners in

1 Build-A-Bear Workshop.

2 Q: Who are they?

3 A: Walnut Capital Partners out of Cincinnati,
4 Catterton Partners (phonetic spelling).

5 Q: With a C?

6 A: Yes. Kansas Equity Partners, Barney
7 Ebsworth (phonetic spelling). Those are the
8 majority large owners of the company.

9 Q: Are you the majority owner?

10 A: No. I'm the largest single investor but I'm
11 not the majority owner. They own together more than
12 I own.

13 Q: Are you involved in creating trademarks for
14 Build-A-Bear Workshop?

15 A: Yes.

16 Q: And I understand that Build-A-Bear Workshop
17 has a large number of trademarks at this time?

18 A: Yes.

19 Q: What is the process that a customer
20 undertakes when they assemble a Teddy bear at a
21 Build-A-Bear Workshop store.

22 MS. ALVEY: I'll object to this question as
23 going beyond the scope of the 56-F order. You're
24 hear to talk about her creation of the heart and
25 what she knew about Vermont Teddy Bear at the time

1 she created, adopted and first began to use the
2 heart and getting into the business as a whole is
3 not appropriate at this time.

4 MR. SPIEGEL: Well, this question is
5 appropriate because it does to have to do with what
6 aspect of the assembly are considered to be
7 trademarks and what aren't. So I note your
8 objection, but I would like to receive an answer on
9 that.

10 MS. ALVEY: I'm going to object that it goes
11 beyond the 56-F order and instruct her not to answer
12 anything that goes beyond the discussion of the
13 heart trademark that's at issue in this summary
14 judgement.

15 MR. SPIEGEL: I think that's an
16 inappropriate objection because there are a number
17 of steps that are undertaken in making a stuffed
18 animal, some of which are considered trademarks and
19 some of which aren't. It's an issue concerning the
20 56F how a customer knows that this is a trademark
21 and whether they know it is or not. So I'm going to
22 again ask that the question be answered.

23 MS. ALVEY: I'm going to instruct the
24 witness not to answer the question.

25 MR. SPIEGEL: Well, how many minutes in are

1 we? We've reached and impasse.

2 MS. ALVEY: If you want to ask her about the
3 heart mark and how she created it and adopted it and
4 began to use it, that's the content that you're
5 permitted to ask her about.

6 MR. SPIEGEL: That's what that question is
7 about.

8 MS. ALVEY: You're not entitled to ask her
9 about the entire experience at Build-A-Bear Workshop
10 and any other trademarks that she claims.

11 MR. SPIEGEL: I think I'm permitted to place
12 a context on the questions. I'm not asking the full
13 blown series of questions that one would ask in an
14 interview that is not restricted by the 56F issue,
15 but I believe I am entitled to ask questions that
16 put in context the trademark that's at issue and how
17 it was created and how it was first used.

18 MS. ALVEY: You're asking about all the
19 trademarks that she claims Build-A-Bear Workshop --
20 that's too broad.

21 MR. SPIEGEL: No. I didn't ask that. I
22 asked what steps the customer takes when they create
23 a bear at the Build-A-Bear Workshop. I didn't ask
24 about all the trademarks. I'm looking at something
25 that will be of evidence and there seem to be a

1 finite number of them, six or seven steps and I
2 think one of which involves the heart. And I think
3 I'm entitled to -- I don't believe that the order of
4 Mr. Wellington causes me to have to merely ask
5 questions in a complete vacuum without being able to
6 put those questions in context as one would do
7 during a proper deposition.

8 MS. ALVEY: Well, he denied the first part
9 of your deposition which goes to her use and I think
10 you're getting too far field into how she is using
11 the trademark today and what the -- you know, what
12 you do with the retail store today. And you're not
13 staying within the parameters of when she first
14 adopted the heart, created the heart and first used
15 the heart.

16 MR. SPIEGEL: I'm happy to rephrase the
17 question in that way. I don't have a problem with
18 that as compared to if my question was interpreted
19 as meaning how it's done today. That wasn't my
20 intent. My intent was that at the time this mark
21 was allegedly created. So I'm happy to rephrase the
22 question to put it more in the context of that time
23 period.

24 MS. ALVEY: Okay. I'll listen to your
25 question as rephrased.

1 Q: (By Mr. Spiegel) When did you begin to use
2 placement of a heart in a bear or in a stuffed Teddy
3 bear as a part of the building of a bear at the
4 Build-A-Bear Workshop?

5 MS. ALVEY: I'm going to object to the
6 question in terms of the characterization of what
7 the heart mark is and certainly to the use of the
8 term building a bear. But subject to my objection,
9 she can answer that question.

10 A: When you make a bear at Build-A-Bear
11 Workshop -- Oh, we started on October 26, 1997.
12 That was our first day of business.

13 Q: (By Mr. Spiegel) And on that day of
14 business your -- when a customer would come into the
15 store and make their own stuffed animal as it were,
16 Teddy bear or whatever it was, was that step of
17 placing the heart in a bear part of the process?

18 A: Yes.

19 Q: And on that first day October 26, 1997 when,
20 as you've just testified, the placement of a heart
21 within the bear was a part of the process of making
22 a stuffed animal --

23 MS. ALVEY: I'm going to object to the
24 extent it mischaracterizes the witness' testimony
25 and mischaracterizes the heart mark, what the heart

1 mark is.

2 MR. SPIEGEL: And with that objection again
3 I can receive an answer?

4 MS. ALVEY: Okay.

5 A: Could you restate the question please?

6 MR. SPIEGEL: Would you read it back please?
7 (Whereupon, the requested
8 portion of the record was read
9 by the reporter.)

10 MR. SPIEGEL: That's where I stopped because
11 counsel didn't allow me to complete my question
12 before objecting to it.

13 MS. ALVEY: I apologize.

14 Q: (By Mr. Spiegel) What did you do to inform
15 those customers that the placement of the heart
16 within a bear was a trade mark of Build-A-Bear
17 Workshop?

18 A: We didn't have a sign that said it was a
19 trademark. We had hearts in a container available
20 and we offered them to the customers to put inside
21 their bear.

22 Q: And did their come a time when you took
23 additional efforts, over and above those to which
24 you've just testified, to inform customers of the
25 Build-A-Bear Workshop that placement of a heart in

1 the bear was considered to be a trademark of
2 Build-A-Bear Workshop?

3 A: Yes.

4 Q: And what were those steps?

5 MS. ALVEY: I'm going to object to the
6 question as going beyond the scope of the 56F
7 motion. I don't understand why you are getting into
8 her use and promotion of the heart mark when he
9 clearly --

10 MR. SPIEGEL: I am not getting into use and
11 promotion, Ms. Alvey. I very clearly asked the
12 question about what steps they take to inform their
13 customers that it's a trademark. It may not have
14 been a trademark at one time and may have become one
15 later based upon the manner of informing the
16 customers and that objection is ridiculous.

17 MS. ALVEY: It's not ridiculous. What they
18 allowed you to do based on your affidavit saying
19 that you needed to this evidence to respond to the
20 motion for summary judgement is to ask her, which
21 you haven't done, how she created the heart, adopted
22 the heart, and first began to use the heart and what
23 she knew about Vermont Teddy Bear Co. at that time.
24 You're not permitted to get into how she uses the
25 heart, how she promotes the heart. And, in fact,

1 you specifically asked for that information in 9A
2 and that motion was denied.

3 MR. SPIEGEL: Well, listen to 9B. Such
4 information clearly has a bearing on whether
5 opposer's use of the heart in the bear mark is, in
6 fact, trademark use and that's what I'm --

7 MS. ALVEY: Vermont Teddy Bear, not
8 Build-A-Bear Workshop. And if you look at what such
9 information refers to it's the fact that you believe
10 she knew of Vermont Teddy Bear's use of the heart
11 and the time she began to use the heart. It's not
12 evidence of how she uses or how Build-A-Bear
13 Workshop uses or promotes its heart mark. And you
14 specifically asked for that in 9A and that was
15 denied. I'm not trying to be unreasonable, but I'm
16 going to restrict you to what the TTAB said you were
17 entitled to ask you.

18 MR. SPIEGEL: And I don't believe I'm going
19 beyond the scope of what the TTAB is permitting me
20 to do. The question is when this trademark was
21 created.

22 MS. ALVEY: That wasn't the question. You
23 asked what she did later after the opening to
24 promote the trademark. You're not limiting it to
25 the creation of the trademark.

1 MR. SPIEGEL: Well, the point I'm making is
2 when the store opened on October 26, 1997 and there
3 was a heart being placed in the chest of a Teddy
4 bear that doesn't necessarily mean that that was --
5 a trademark had been created. That is a part of a
6 business operation. And what I'm trying to find out
7 is at what point in time did this become a
8 trademark.

9 MS. ALVEY: That is not the scope of this
10 deposition today. That's exactly what you were
11 denied, what your order was -- the order denied was
12 your request to get into her use and to compare it
13 to Vermont's use. What you're allowed to do is to
14 ask her about the creation of the heart, how she
15 adopted it and began to use it specifically in the
16 context of your assertion that she knew about
17 Vermont at that time. And you're able to ask her
18 what she knew about Vermont at that time.

19 MR. SPIEGEL: Allow me to read the first
20 sentence of 9B.

21 MS. ALVEY: I'm going to instruct her not to
22 answer that.

23 MR. SPIEGEL: Well, I'm going to read it
24 right now for the record. Information concerning
25 the precise circumstances under which applicant

1 allegedly created bear mark, not the heart in the
2 bear concept, their mark, adopted it and began to
3 use it.

4 Now I contend that when the store opened it
5 was not a trademark and it becomes a trademark when
6 it is used, as you know under the trademark law, to
7 notify the customers that it's associated with its
8 source, the Build-A-Bear Workshop. And I don't
9 believe that was being done when the store opened
10 and I'm entitled to ask questions to find out at
11 what point in time it became a mark.

12 I'm not asking questions -- I'm not planning
13 to ask a number of questions about the different
14 various ways that the Build-A-Bear Workshop uses
15 that alleged mark. I'm trying to establish at what
16 point in time it became a mark.

17 MS. ALVEY: And you know based on the
18 definitions in the case when we say mark that's
19 referring to the use of the heart inside the bear
20 and you're entitled to ask about when she first
21 created that heart inside the bear and not -- If you
22 want to make a legal argument in your brief as to
23 whether it's trademark use and when, you're entitled
24 to do that. But the issue today is what information
25 you're entitled to ask her about under the 56F order

1 in order to respond to the summary judgement motion
2 at issue in the summary judgement motion which
3 relates to whether Vermont Teddy Bear's use is
4 merely ornamental. And what Mr. Wellington said he
5 would allow you to ask about is what she knew about
6 Vermont Teddy Bear Co. at the time she created the
7 heart mark.

8 And I have been -- I'm trying to be flexible
9 in even letting you get in to how she created the
10 mark and began to use it and not just restrict you
11 to what she knew about Vermont Teddy Bear Co. at
12 that time. But I'm not going to let you get into
13 the general questions about her use and promotion of
14 the mark past that time.

15 MR. SPIEGEL: And I don't intend to ask any
16 questions about promotion of the mark. Just to try
17 to establish when the placement of the heart in the
18 bear became a trademark.

19 MS. ALVEY: I'm going to object to the
20 question and instruct her not to answer.

21 MR. SPIEGEL: I wonder if we can call Mr.
22 Wellington from this room and see what he has to say
23 about this cause I'd like to get his reading on this
24 so that I know whether I came to St. Louis for no
25 good reason.

1 MS. ALVEY: Well, I would suggest you ask
2 her the questions within the context of the order
3 then we can take a break or conclude the deposition
4 and we can try to give him a call.

5 MR. SPIEGEL: Well, I have a certain order
6 that I want to follow in the deposition that I'm
7 taking. I wouldn't dare to suggest to you the order
8 of questions you would ask in a deposition that you
9 might take. So why don't we adjourn for a second
10 and go off the record and let's see if we can get
11 Mr. Wellington.

12 (Whereupon, there was a break in
13 the proceedings. The testimony
14 resumes as follows:)

15 MR. SPIEGEL: Back on the record. While we
16 were briefly adjourned Ms. Alvey and I held a
17 telephone conference with Mr. Wellington who is the
18 interlocutory attorney at the Trademark Trial and
19 Appeal Board and he declined to make any decision
20 concerning the issue that I raised concerning
21 whether questions that I've asked the witness should
22 be answered. And during the telephone conversation
23 he indicated that he would consider, but did not
24 guarantee, that if the opposer feels the need to
25 file a motion to compel additional testimony that is

1 not being given today that he would consider, but
2 not guarantee, being able to continue the deposition
3 via' telephone. Is that an accurate
4 characterization Ms. Alvey?

5 MS. ALVEY: Yes.

6 Q: (By Mr. Spiegel) So now let's go on. Now
7 correct me if I inaccurately characterize your
8 testimony. You testified that on October 26, 1997 a
9 store opened and there were hearts available for
10 customers to use in assembling stuffed animals. Is
11 that a correct characterization of your testimony or
12 would you like to restate your testimony if that
13 isn't?

14 MS. ALVEY: I'm going to object that I think
15 it mischaracterizes her testimony. I think you've
16 asked and she's answered the question.

17 MR. SPIEGEL: I'm just refreshing my
18 recollection since we were off.

19 MS. ALVEY: I object to your continued
20 characterization of it being part of a process.
21 That's not what she said. She said that hearts were
22 available and that customers were able to put a
23 heart inside a bear. That's what she said. She
24 hasn't said it's part of the process. I think
25 you're mischaracterizing what she said in your

1 question.

2 Q: (By Mr. Spiegel) Okay. Were you involved
3 in the creation of what Build-A-Bear Workshop claims
4 is a trademark concerning placing a heart inside a
5 Teddy bear?

6 A: What do you mean by creation?

7 Q: Are you the one that thought of the idea?

8 A: No.

9 Q: Who thought of the idea?

10 A: A friend of mine.

11 Q: And who was that?

12 A: Her name is Sara Russell.

13 Q: Can you explain how that occurred?

14 A: On the 4th of July in 1997 we were at a
15 barbecue, a family friend's barbecue, and I brought
16 all my stuffed animals to the barbecue to show my
17 friends what we were doing. Everybody was very
18 interested in the business. And Sara was an artist
19 and she was holding the bears and she said these
20 bears are so soft and so wonderful, you should put
21 hearts in the bears. And I said what kind of
22 hearts. And she said soft, printed, velvet, satin,
23 something soft and make every bear have a heart.

24 Q: And what was your reaction to that?

25 A: I said it's a great idea. I'll take care of

1 it.

2 Q: Has Sara Russell ever been employed by
3 Build-A-Bear Workshop?

4 A: No.

5 Q: Did anybody besides you and Sara Russell
6 witness the conversation?

7 A: I don't think anybody was standing around or
8 heard the conversation at that time.

9 Q: And where was this barbecue?

10 A: At the home of Bruce and Ellen White.

11 Q: Bruce and Ellen White?

12 A: Yes.

13 Q: And where was that located? I don't need
14 the address.

15 A: St. Louis, Missouri.

16 Q: In St. Louis? Okay. And did there come a
17 time after the barbecue that you caused some hearts
18 to be manufactured?

19 A: What do you mean by caused hearts to be
20 manufactured?

21 Q: That you -- Well, I didn't know that you
22 would cut them out yourself. I thought maybe you
23 would hire somebody to do that or fabricate them in
24 some fashion.

25 A: Yes. I contacted our manufacturer and I

1 gave him an approximate size and suggested materials
2 and I asked him to develop some puffed hearts and
3 send me them for approval.

4 Q: Now when you say our, what do you mean by
5 our, when you said our manufacturer?

6 A: The manufacturer that manufactures our
7 stuffed animals. Our being Build-A-Bear Workshop.

8 Q: The first store opened on October 26, 1997
9 and according to your testimony the barbecue
10 occurred four and a half months earlier?

11 A: (Witness nods).

12 Q: Did an entity known as Build-A-Bear Workshop
13 exist at the time of the barbecue?

14 A: The company name existed. I think we were
15 under a different -- we were under an LLC. I don't
16 remember exactly all the timing of the corporate
17 government stuff that transpired, but we did have --
18 all our branding was developed and our name and our
19 logo. And our store design was in the process of
20 being finalized. We were working under the working
21 name was Build-A-Bear Workshop.

22 Q: Was Sara Russell ever compensated for the
23 idea that she gave you?

24 A: No.

25 Q: Has the subject of compensation ever come up

1 in conversations with her?

2 A: No.

3 Q: Do you know Sara Russell's address?

4 A: Not offhand.

5 Q: Does she live in the St. Louis area?

6 A: She's deceased.

7 Q: Oh, she's deceased? Do you know when she
8 passed away?

9 A: About two months ago.

10 Q: At the time of the barbecue had you heard of
11 a company named the Vermont Teddy Bear Company?

12 A: Yes.

13 Q: What did you know about the Vermont Teddy
14 Bear Company?

15 A: I knew that they existed as a company out of
16 Vermont. They sold bears to predominantly an adult
17 audience already made up in dress called bear grams.
18 They had a factory in Vermont. They had a catalog.
19 And I believe that they also advertised on radio.
20 And information that was available I got out of
21 their annual report.

22 Q: Have you ever asked to be put on any mailing
23 list of the Vermont Teddy Bear Co.?

24 A: Yes.

25 Q: Could you describe that, what list or lists

1 that you're on?

2 A: I'm on a list for their preferred e-mail
3 list. I'm on a mailing list cause I get their
4 catalogs. I've made purchases in their catalog. So
5 I assume I'm on that list as well.

6 Q: Do you know how long you've been on the list
7 for catalogs?

8 A: Probably since late '96 or so.

9 Q: Is any member of your family on a list as
10 well?

11 A: Yes.

12 Q: And who is that?

13 A: My husband Robert Fox.

14 Q: Is his address the same as yours?

15 A: Yes.

16 Q: Have you been receiving Vermont Teddy Bear
17 Co. catalogs since, as you described it, late 1996?

18 A: Yes.

19 Q: When you received those catalogs do you
20 review them?

21 A: Yes.

22 Q: And when you order merchandise you've
23 testified that you've ordered merchandise from
24 Vermont Teddy Bear Co. do you order it from the
25 catalogs?

1 A: Initially I ordered from the catalog and I
2 think I also ordered from the Internet.

3 Q: I am now going to show you some -- a set of
4 documents which consists of pages that Build-A-Bear
5 Workshop produced during the course of discovery.
6 The pages are identified by the Bates numbers BABW -
7 VTB - 383 through 430. And I'd like to show this to
8 you and ask you if you recognize it. And with
9 counsel's permission, I have sort of an original of
10 the same set of documents that you can feel free to
11 compare if it's easier to see it.

12 MS. ALVEY: That's fine with me. This one
13 is the same (indicating)?

14 THE WITNESS: Yeah. I'm sure it is.

15 Q: (By Mr. Spiegel) Did you receive that
16 catalog?

17 A: Yes.

18 Q: I'd like to identify that as Exhibit 1.
19 (Whereupon, Deposition Exhibit No. 1
20 was marked for identification and the testimony
21 resumes as follows:)

22 Q: (By Mr. Spiegel) I'd like you to look at
23 the front page of that catalog which is identified
24 by page 383 and I wonder if you can read the date
25 and, if not, if you can see it from the original?

1 A: Yes.

2 Q: What is the date?

3 A: Holiday 1996.

4 Q: Do you remember when you receive that
5 catalog?

6 A: No. I don't remember exactly.

7 Q: Do you remember if it was some time during
8 the holiday season of 1996, the Christmas holiday
9 season?

10 A: Logically. But I don't remember exactly the
11 date that I, you know, received it.

12 Q: Now I'd like you to turn to page 430 which
13 is the last page. And you can certainly flip over
14 to the original of the catalog to see the same page.
15 I'd like to ask you if you see an addressee on page
16 430?

17 A: Yes.

18 Q: And who is that addressee?

19 A: Me.

20 MR. SPIEGEL: Let the record show that Miss
21 Clark is referring to the name Maxine Clark that is
22 printed on page 430 of Build-A-Bear's discovery
23 documents.

24 Q: (By Mr. Spiegel) Now at the top of the page
25 on the upper right-hand corner could you describe

1 what you see?

2 A: I see a purple circle with a heart in the
3 middle of it. It says make a friend for life.

4 Q: And to the left of that do you see some
5 wording?

6 A: Yes.

7 Q: And what does that say?

8 A: It says make your own Teddy bear.

9 Q: Now looking down below do you see a bulk
10 rate square that talks about postage being paid?

11 A: Yes.

12 Q: Would you read into the record the wording
13 that is just above that bulk rate square?

14 A: Place brass heart inside bear and final
15 stitch and you're done. Want me to read the rest?

16 Q: No. It's not necessary. And can you
17 describe what -- do you see a drawing above the
18 wording you just read into the record?

19 A: Yes.

20 Q: Could you describe what that is depicting?

21 A: It just looks like a lady holding a bear and
22 a little girl holding a bear and the lady has a
23 needle and thread in her hand. It's hard to see
24 that. Maybe with a magnifying glass I could see it.
25 She's stitching up the bear.

1 Q: Did you receive this catalog before the
2 July 4th barbecue in 1997?

3 A: Yes.

4 Q: Have you ever visited any facility of the
5 Vermont Teddy Bear Co?

6 A: Yes.

7 Q: And could you say which one or ones you have
8 visited?

9 A: I've only visited the New York store during
10 the short time it was opened.

11 Q: Has any employee or investor visited, to
12 your knowledge, any of the Vermont Teddy Bear Co.
13 stores?

14 A: Not that I know of.

15 Q: Have you ever purchased a Make a Friend for
16 Life kit from the Vermont Teddy Bear Co?

17 A: I believe I did purchase that kit.

18 Q: And do you know when you did?

19 A: I don't remember exactly. Sometime between
20 receiving that catalog and the spring of '97
21 probably.

22 Q: So you would have purchased that kit before
23 the barbecue?

24 A: Not positive, but probably.

25 Q: Forgive me, did you testify as to

1 approximately what date you visited the New York
2 store? I don't recall if you did or not.

3 A: Today here?

4 Q: Just now.

5 A: No. I didn't say.

6 Q: Do you remember when that was?

7 A: It was probably some time in the fall of
8 '97, late summer or early fall.

9 Q: Now I want to ask you about the kit. To the
10 best of your recollection did the kit come with
11 instructions as to how to use the kit?

12 A: There were some papers inside the kit.

13 Q: And do you recall what the papers were?

14 A: I did not really look at them. I wasn't
15 buying it to make the bear.

16 Q: Why were you buying it?

17 A: Just as part of research on different
18 businesses. I bought from lots of other businesses
19 along the way.

20 Q: Do you recall what components were in this
21 kit?

22 A: Yes.

23 Q: Could you describe them?

24 A: There was stuffed animal pieces, acrylic.
25 There was a bag of stuffing. There was a plastic

1 bag with a brass heart and a chain and the brass
2 heart had a hole in it and there was some papers
3 rolled up. I don't remember exactly. And I think
4 that was it. Some plastic pieces like joints that
5 you would put in the bear.

6 Q: Could you describe the chain that you just
7 mentioned that was part of the kit?

8 A: Came in a little plastic bag. It was just a
9 chain like a necklace chain, pendant chain.

10 Q: Do you remember what material it was made
11 out of?

12 A: Metal, like a gold colored metal.

13 Q: I just want to go into that in a little more
14 detail. Can you describe what kind of a chain it
15 was in terms of its structure?

16 A: I don't -- I'm not a jeweler. I don't
17 really know about chains, but it was metal like a
18 necklace chain. I don't remember too much about it.
19 It was just in the plastic bag and there was a heart
20 with a hole in it.

21 Q: Do you recall what the instructions -- Did
22 you testify that you saw instructions?

23 A: I don't know that they were instructions. I
24 just saw papers in the box and closed up the box and
25 didn't pay much attention it to.

1 Q: Have you saved that kit?

2 A: I don't know where it is. Everything that I
3 had I turned over to my attorneys, but I don't know
4 where that kit is. I have lots of samples and we
5 moved lots of times. I don't know where that is.

6 Q: So if during discovery I ask you to locate
7 it it might be difficult?

8 A: Yes.

9 Q: Did any employee of Build-A-Bear review the
10 papers that you found inside the kit?

11 A: There were no employees at Build-A-Bear at
12 the time.

13 Q: Well sometime during the time that you were
14 aware of the location of the kit did any employee of
15 Build-A-Bear --

16 A: I don't think so.

17 Q: You don't think so? Okay. Did you examine
18 the kit carefully?

19 A: Not overly carefully. It was more for just,
20 you know, competitive shopping that I bought it. It
21 wasn't for any other reason. And I wasn't impressed
22 particularly by it so I don't recall a lot of things
23 about it. It didn't make a huge impression on me
24 one way or the other.

25 Q: Did I understand your testimony correctly

1 that you gave the Make a Friend for Life kit that
2 you received to your lawyers?

3 MS. ALVEY: I'm going to object that that
4 mischaracterizes her earlier testimony. She said
5 she gave everything she had in her possession to her
6 lawyers and she didn't know if she had the kit.

7 Q: (By Mr. Spiegel) So you don't know if
8 everything as you characterize it included the kit?

9 A: I don't know.

10 Q: So you don't know whether or not you gave
11 that kit to your lawyers?

12 A: Right.

13 Q: And as we sit her today you couldn't tell me
14 where that kit is?

15 A: Right.

16 Q: Would it surprise you to learn that Make a
17 Friend for Life kits don't have chains?

18 A: I don't know what they have today.

19 Q: Would it surprise you to know that they've
20 never had chains?

21 A: I believe the set that I got had a chain in
22 it. It came in a little plastic bag that was sealed
23 with a heart and a chain in it. That's what I
24 recall.

25 Q: You testified earlier that your husband's

1 name is Robert Fox?

2 A: Uh-huh.

3 Q: Did he accompany you to the barbecue in July
4 of 1997?

5 A: Yes. I'm sure he did.

6 Q: Do you recall whether he was any where near
7 you during the conversation with Sara Russell?

8 A: I don't recall.

9 Q: You don't recall? As you sit here today are
10 you aware that the Vermont Teddy Bear Co. offers a
11 service in its factory store in which customers can
12 place a heart in a bear?

13 MS. ALVEY: I'm going to object that it's
14 irrelevant. It's not within the scope of the 56F
15 motion to the extent it involves what she knows
16 about the Vermont Teddy Bear Co. today versus what
17 she knew about Vermont Teddy Bear Co. when she
18 adopted the heart mark.

19 MR. SPIEGEL: That was my next question. I
20 was just putting it in context.

21 MS. ALVEY: That's fine. I'll let her
22 answer subject to that objection.

23 A: Would you repeat the question?

24 Q: (By Mr. Spiegel) As you sit here today are
25 you aware that the Vermont Teddy Bear Co. offers in

1 its factory store a service in which customers can
2 assemble a Teddy bear including placing a heart in
3 the bear?

4 A: I'm aware that they do that today.

5 Q: Do you know how long you've been aware that
6 that's been the case?

7 A: Not exactly how long I've been aware of it.

8 Q: Maybe more artfully asked, do you know when
9 you first became aware that that service was being
10 offered by the Vermont Teddy Bear Co. in its factory
11 store?

12 A: Probably not aware of it until sometime in
13 '98 or '99 after they started doing business with
14 Zany Brainy.

15 MR. SPIEGEL: Why don't we take about a five
16 or ten minute break. I might catch an earlier plan
17 home. I'll look things over and see if there's
18 anything else I want to ask. Off the record.
19 (Whereupon, there was a break in
20 the proceedings. The testimony
21 resumes as follows:)

22 Q: (By Mr. Spiegel) I'll show you a document
23 that is titled with the caption of this opposition
24 proceeding Applicant's Amended and Supplemental
25 Response to Opposer's First Set of Interrogatories

1 to Applicant and I ask you if you've seen this
2 document before?

3 A: It looks familiar. I looked at them on the
4 Internet and the e-mail. So it's possible that I --
5 I assume I saw it.

6 Q: I'd like to identify this as Exhibit 2.
7 (Whereupon, Deposition Exhibit No. 2
8 was marked for identification and the testimony
9 resumes as follows:)

10 Q: (By Mr. Spiegel) Now I ask you to go to the
11 third to the last page which is headed verification
12 and I note that this document, which was provided to
13 me graciously by your lawyers, that the verification
14 is not signed. And so I just want to ask you if you
15 verify, and you are under oath, these supplemental
16 responses as set forth in this document?

17 A: Yes.

18 Q: I'd like you to turn to interrogatory number
19 six and I will read -- the pages aren't numbered
20 unfortunately, but interrogatory number six says the
21 following "Please explain how, when and where
22 applicant first created the "heart in the bear"
23 mark." Do you see that?

24 A: Yes.

25 Q: I was wondering why you didn't make any

1 mention of the barbecue and the circumstances
2 concerning that when you made this response?

3 MS. ALVEY: I'm going to object. The
4 document speaks for itself. If you want to -- You
5 can use the interrogatory answers in any way you
6 want obviously. I don't think it's relevant to the
7 scope of the 56F as to why she didn't give all the
8 details in an interrogatory response. She's giving
9 you the details today of how that came about and
10 there's certainly nothing inconsistent in any of
11 that.

12 MR. SPIEGEL: I think it goes to the
13 credibility. I think I'm entitled to ask that
14 question.

15 MS. ALVEY: Subject to the objection she can
16 answer the question.

17 Q: (By Mr. Spiegel) What is your answer?

18 A: I don't have an answer. I put July 1997
19 which is the date that's correct. I didn't know
20 that where, when, how was required.

21 Q: Well, the interrogatory does say please
22 explain how, when and where?

23 MS. ALVEY: Well, we objected to the
24 interrogatory and subject to she said it was in St.
25 Louis in July of 1997.

1 MR. SPIEGEL: All right. I have nothing
2 further.

3 MS. ALVEY: We'll read.
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 COMES NOW THE WITNESS, Maxine Clark,
2 and having read the foregoing transcript
3 deposition taken on the 22nd day of June,
4 acknowledges by signature hereto that it is
5 and accurate transcript of the testimony given
6 the date hereinabove mentioned.

7
8 *Maxine Clark*

9 -----
10 Maxine Clark

11 Subscribed and sworn to me before this ____ 2 ____ d
12 July _____, 2004.

13 My commission expires: _____ 12/3/06
14
15

16
17 *Mary J. Baumgartner*

18 -----
19 Notary Public

MARY J. BAUMGARTNER
NOTARY PUBLIC - NOTARY SEAL
STATE OF MISSOURI
ST. CHARLES COUNTY
MY COMMISSION EXPIRES: DEC. 3, 2006

20
21
22
23
24
25

Gore Perry Gateway & Lipa St. Louis, MO
(314) 241-6750 621-4790 621-2571 621-8883

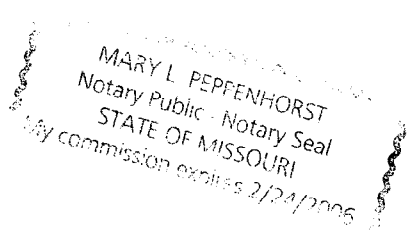
1 State of Missouri
2 SS.
3 County of St. Louis
4 I, Mary L. Peppenhorst, a Notary Public in
5 and for the State of Missouri, duly commissio
6 qualified and authorized to administer oaths
7 certify to depositions, do hereby certify that
8 pursuant to Agreement in the cause now pending
9 undetermined in the United States Patent and
10 Trademark Office, to be used in the trial of said
11 cause with said appeal board, I was attended at
12 offices of Blackwell Sanders Peper Martin LLP, 7
13 Olive Street, Suite 2400, in the City of St. Louis
14 State of Missouri, by the aforesaid attorneys; on
15 the 22nd day of June, 2004.
16 The said witness, being of sound mind and
17 being by me first carefully examined and duly
18 cautioned and sworn to testify the truth, the whole
19 truth, and nothing but the truth in the case
20 aforesaid, thereupon testified as is shown in the
21 foregoing transcript, said testimony being by me
22 reported in shorthand and caused to be transcribed
23 into typewriting, and that the foregoing page
24 correctly set forth the testimony of the
25 aforementioned witness, together with the questions

Gore Perry Gateway & Lipa St. Louis, MO
(314) 241-6750 621-4790 621-2571 621-8883

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

propounded by counsel and remarks and of
counsel thereto, and is in all respects
true, correct and complete transcript of
questions propounded to and the answers of
said witness; that signature of the deponee
waived by agreement of counsel.
I further certify that I am not of counsel
or attorney for either of the parties to said
not related to nor interested in any of the parties
or their attorneys.
Witness my hand and notarial seal at St.
Louis, Missouri, this 28th day of June, 2004.
My Commission expires February 24, 2006.

Notary Public in and for the
State of Missouri



Gore Perry Gateway & Lipa St. Louis, MO
(314) 241-6750 621-4790 621-2571 621-8883

EXHIBIT 10





Friend or Life
Conceived by a man & a woman
Born a child

**Friend
or Life**



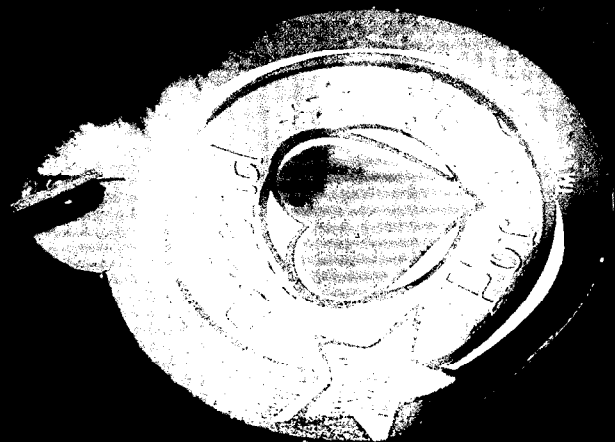




EXHIBIT 10



For Life
Caring for Life

For Life
Caring for Life
Dana House

For Life
Caring for Life
Dana House

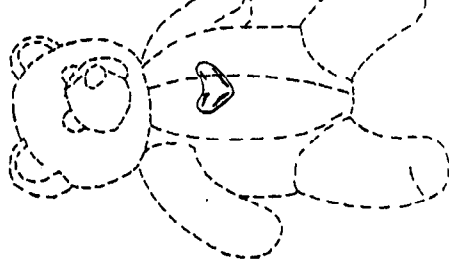
Friend or Life
Conceived in the Heart
Born Abroad
Friend or Life
Conceived in the Heart
Born Abroad

Friend or Life









LAW OFFICE 10

PRINCIPA

~~Wheatland, Wyo. 2004~~

ATTORNEY ADVISOR:

PUBLISHED
7/13/99

CONTENTS

	Entry	Date	Initials
1		SEP 15 1998	
2		12/13/98	
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			
29			
30			

NOP
7/13/99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE
FEE RECORD SHEET

02/26/1998 6THOMAS2 00000070 75434462
01 FC:361 490.00 DP

PTO-1555
(5/87)

February 11, 1998

Box NEW APP FEE

Assistant Commissioner for Trademarks

2900 Crystal Drive

Arlington, VA 22202-3513

RE: New Intent-to-use Trademark Application

Mark: The mark consists of a three dimensional heart shaped object, chosen by the purchaser of a stuffed or plush toy animal, and placed inside the stuffed or plush toy animal before it is stitched closed.

Applicant: Build-A-Bear Workshop, LLC

Our Ref: 13940.54188

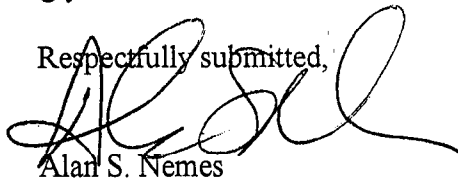
Sir:

We enclose herewith a new intent-to-use application for the identified trademark. Also enclosed for filing with the U.S. Patent and Trademark Office, please find:

1. A check for the Government filing fee of: \$490.00
2. A drawing page

If for any reason the enclosed fee is insufficient in covering the required costs hereof, please debit our account no. 11-0160 accordingly.

Respectfully submitted,



Alan S. Nemes

Attorney for Applicant/Build-A-Bear Workshop, LLC

rsc/f:10/c

CERTIFICATE OF MAILING

DATE OF DEPOSIT: February 11, 1998

I hereby certify that the foregoing documents are being deposited with the United States Postal Service, First Class Mail, postage prepaid, on the above identified date, and are addressed to the Assistant Commissioner for Trademarks, **Box NEW APP FEE**, 2900 Crystal Drive, Arlington, VA 22202-3513.


Alan S. Nemes

KALISH & GILSTER INTELLECTUAL PROPERTY GROUP

STLD01-616737V1

Build-A-Bear Workshop, L.L.C., a Missouri limited liability company
1964 Innerbelt Business Center Drive
St. Louis, Missouri 63114

The above-identified applicant has adopted and intends to use the trademark shown in the accompanying drawing for plush animals and stuffed toy animals in International Class 28; and retail store services in connection with the sale of plush toy animals, stuffed toy animals, and accessories therefor in International Class 35; and requests that said mark be registered in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946.

Applicant has a bona fide intention to use the mark in commerce on or in connection with the above-identified goods (15 U.S.C. § 1051(b), as amended). The intended manner or mode of use of the mark on or in connection with the goods is as follows: By inserting it inside the goods prior to purchase. The intended manner or mode of use of the mark in connection with the services is as follows: In connection with signage, advertising and promotional materials, marketing techniques, and by other means customary in the trade.

[The outline of a teddy bear in the attached drawing is used to signify the placement of a heart shaped object inside a stuffed or plush toy animal; the teddy bear design itself is not claimed as part of the mark, as the heart shaped object may be placed in any stuffed or plush toy animal.]

[The stippling on the heart shaped object is for shading purposes only.]

- P1 M7
- P1 M7

STLD01-616357V1

insufficient to cover the required costs hereof, please debit our attorney's account no. 11-0160 accordingly.

Applicant hereby appoints Alan S. Nemes, Ralph W. Kalish, Jr., Peter S. Gilster, Donald J. Fitzpatrick, Rebecca J. Brandau, Caroline G. Chicoine, Sondra D. Schol, T. William Alvey, III and Karen R. Lorenzini, members of the bar of the State of Missouri; of the firm of Kalish & Gilster Intellectual Property Group, Peper, Martin, Jensen, Maichel and Hetlage, 720 Olive Street, 24th. Floor, St. Louis, Missouri 63101-2396, or their duly appointed associates, its attorneys, with full power of substitution, revocation and addition, to prosecute this application to register, to transact all business in the Patent and Trademark Office in connection therewith and to receive the certificate.

DECLARATION

The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the application sought to be registered, or, if the application is being filed under 15 U.S.C. 1051(b), he/she believes the applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the above identified mark in commerce, either in the identical form

STLD01-616357V1

or in such near resemblance thereto as may be likely, when applied to the goods and services of such other person, to cause confusion, or to cause mistake, or to deceive; and all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

BUILD-A-BEAR WORKSHOP, L.L.C.

Date: 2/10/98

By: Maxine Clark

Name: Maxine Clark

Title: Manager

STLD01-616357V1

Date of First Use:

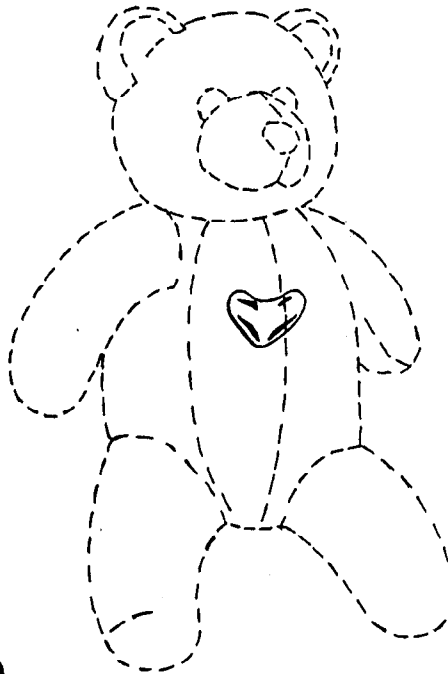
BONA FIDE INTENT TO USE

Mark:

The mark consists of a three dimensional heart shaped object, chosen by the purchaser of a stuffed or plush toy animal, and placed inside the stuffed or plush toy animal before it is stitched closed.

INIT. CL
28
PRIOR US CL
22 23 38 50

INIT. CL
35
PRIOR US CL
100 101 102



TRADEMARK

75434462

2719

PUBLISHED
7/13/99



ADDRESS

ALAN S NEMES
PEPER MARTIN JENSEN MAICHEL AND HETLAGE
720 OLIVE ST 24TH FL
ST LOUIS MO 63101-2396

ACTION NO.

01

MAILING DATE

09/15/98

REF. NO.

13940.54188

2900 Crystal Drive
Arlington, VA 22202-3513

If no fees are enclosed, the address should include the words "Box Responses - No Fee."

Please provide in all correspondence:

1. Filing Date, serial number, mark and Applicant's name.
2. Mailing date of this Office action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and ZIP code.

FORM PTO-1525 (5-90)

U.S. DEPT. OF COMM. PAT. & TM OFFICE

A PROPER RESPONSE TO THIS OFFICE ACTION MUST BE RECEIVED WITHIN 6 MONTHS FROM THE DATE OF THIS ACTION IN ORDER TO AVOID ABANDONMENT. For your convenience and to ensure proper handling of your response, a label has been enclosed. Please attach it to the upper right corner of your response. If the label is not enclosed, print or type the Trademark Law Office No., Serial No., and Mark in the upper right corner of your response.

RE: Serial Number: 75/434462

The assigned examining attorney has reviewed the referenced application and determined the following.

RECITATION OF SERVICES

The recitation of services is unacceptable as indefinite. The applicant may adopt the following recitation, if accurate: retail store services featuring plush toy animals, stuffed toy animals and accessories therefor. TMEP section 1301.05.

The applicant must rewrite the recitation of services in its entirety because of the nature and extent of the amendment. 37 C.F.R. Section 2.74(b).

Please note that, while an application may be amended to clarify or limit the identification, additions to the identification are not permitted. 37 C.F.R. Section 2.71(b); TMEP section 804.09. Therefore, the applicant may not amend to include any services that are not within the scope of the services recited in the present identification.

A handwritten signature in black ink, appearing to read 'Amos T. Matthews', with a stylized, cursive script.

Amos T. Matthews
Examining Attorney
Law Office 108
(703) 308-9108 ext. 165

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Build-A-Bear Workshop, L.L.C.

Examiner: Amos T. Matthews

Mark: Design

Law Office: 108

Serial No.: 75-434,462

Action No.: 01

Ref No.: 13940.54188

Box RESPONSES NO FEE

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

APPLICANT'S RESPONSE TO OFFICE ACTION NO. 1
AMENDMENT

Applicant Build-A-Bear Workshop, L.L.C. responds to Office Action No. 1 with the following amendment:

In response to the Examiner's request, Applicant amends its recitation of services in its entirety as follows:

Goods and Services:

plush animals and stuffed toy animals in International Class 28; and retail store services featuring plush toy animals, stuffed toy animals, and accessories therefor in International Class 35.

REMARKS

Applicant has amended its application in keeping with the Examiner's request. Applicant respectfully submits that as amended, the present Application is now in proper condition for

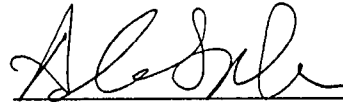
STLD01-690997V1

FILED
LAW OFFICE 108

1999 JAN -6 P 2 53

Respectfully submitted,

Date: December 28, 1998

A handwritten signature in cursive script, appearing to read 'Alan S. Nemes', written over a horizontal line.

Alan S. Nemes
Kalish & Gilster Intellectual Property Group
Peper Martin Jensen Maichel and Hetlage
720 Olive, 24th Floor
St. Louis, MO 63101
(314) 345-6461

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Build-A-Bear Workshop, L.L.C.

Mark: Design

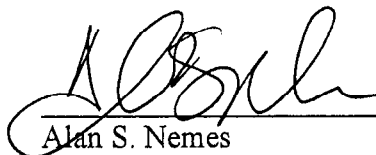
Our Ref. No.: 13940.54188

CERTIFICATE OF MAILING

I hereby certify that the following:

- ✓ Applicant's Response to Office Action No. 1 Amendment
- ✓ Return postcard

are being deposited with the United States Postal Service via First Class Mail, addressed to Box RESPONSES NO FEE, Assistant Commissioner of Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513.



Alan S. Nemes

Attorney for Build-A-Bear Workshop, L.L.C.

ASN/sh
Enclosures

KALISH & GILSTER INTELLECTUAL PROPERTY GROUP

KANSAS CITY, MO OVERLAND PARK, KS OMAHA, NE ST. LOUIS, MO SPRINGFIELD, MO BELLEVILLE, IL LONDON, UK

AFFILIATES: GUANGZHOU MADRID MANCHESTER MEXICO CITY

STLD01-630025V1

1. Serial No.:
75/434,462

2. Mark:
Miscellaneous Design

3. International Class(es):
28, 35

4. Publication Date:
Jul 13, 1999

5. Applicant:
Build-A-Bear Workshop, L.L.C.

The mark of the application identified appears to be entitled to registration. The mark will, in accordance with Section 12(a) of the Trademark Act of 1946, as amended, be published in the Official Gazette on the date indicated above for the purpose of opposition by any person who believes he will be damaged by the registration of the mark. If no opposition is filed within the time specified by Section 13(a) of the Statute or by rules 2.101 or 2.102 of the Trademark Rules, the Commissioner of Patents and Trademarks may issue a notice of allowance pursuant to section 13(b) of the Statute.

Copies of the trademark portion of the Official Gazette containing the publication of the mark may be obtained at \$38.00 each for domestic orders, or at \$47.50 each for foreign orders from:

The Superintendent of Documents
U.S. Government Printing Office
PO Box 371954
Pittsburgh, PA 15250-7954
Phone: (202)512-1800

By direction of the Commissioner.

EXHIBIT 12

LAW FIRM

BLACKWELL SANDERS PEPER MARTIN

720 OLIVE STREET SUITE 1400 ST. LOUIS, MO 63101
TEL: (314) 421-3850 FAX: (314) 621-4834
WEBSITE: www.bspmlaw.com

ALAN S. NEMES
(314) 444-6461
anemes@bspmlaw.com

October 27, 1998

**COPY VIA FACSIMILE
ORIGINAL VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
#P 410 254 984**

Thomas Vellios
President
Children's Concept Inc.
308 E. Lancaster Ave.
Wynnewood, PA 19096-2126

RE: Zany Brainy
Unauthorized Use of Build-A-Bear Workshop Heart Mark
Our Ref: 13940-58576

Dear Mr. Vellios:

We represent Build-A-Bear Workshop, LLC, in connection with its intellectual property matters. We understand that you have opened a department in certain of your stores to allow the on-site assembly of teddy bears in conjunction with The Vermont Teddy Bear Company. It is also our understanding that, prior to entering into such arrangement with this company, you and representatives of your company had approached our client to provide similar services in your stores, but that the parties determined not to proceed in this manner for the time being. We are aware that your company and our client maintain a cordial relationship, and our client has therefore requested that we transmit this letter to you in an attempt to amicably resolve conflicts involving unauthorized use of its intellectual property.

While our client has no objection to your company providing for the assembly and sale of teddy bears in your stores through Vermont Teddy Bear Company departments, it has become aware of certain practices instituted in these new departments which causes our client great concern as to appropriation of its trademarks and trade dress and other intellectual property. As we are certain you will appreciate from visiting with our client at its stores, our client has spent

KALISH & GILSTER INTELLECTUAL PROPERTY GROUP

STLD01-677603V1

KANSAS CITY, MO OVERLAND PARK, KS OMAHA, NE ST. LOUIS, MO SPRINGFIELD, MO BELLEVILLE, IL LONDON, UK
AFFILIATES: GUANGZHOU MADRID MANCHESTER MEXICO CITY

BLACKWELL SANDERS PEPER MARTIN

Mr. Thomas Vellios
October 27, 1998
Our Ref: 13940-58576
Page 2

significant time and resources in developing its proprietary trade dress, trademarks, service marks, copyrights and other intellectual property in providing its goods and services.

Our client has become aware that you have adopted trade dress exclusive of our client, namely, the placement of a toy fabric "heart" by the customer (or employees on behalf of the customer) inside a teddy bear prior to completion of the assembly process.

Long prior to your adoption of same, our client has continuously promoted in its stores, in promotional materials and publicity, and throughout the world on its website, its exclusive rights to such toy hearts placed inside teddy bears and other plush and stuffed toy animals. As you have seen in our client's stores, our client has adopted logos showing a heart being placed inside bears, store fixtures showing hearts inside bears, store departments utilizing the service mark "Heart Stuff" and design, and references on its website that Build-A-Bear Workshop uniquely provides a heart inside every bear, etc.

In addition, our client has filed with the United States Patent and Trademark Office under Application Serial Nos. 75,434,462, an application for "a three dimensional heart shaped object, chosen by the purchaser of a stuffed or plush toy animal, and placed inside the stuffed or plush toy animal before it is stitched closed". Further, our client has filed with the United States Patent and Trademark Office a design trademark and service mark application showing bears fancifully placing a heart inside a bear about to be stitched closed, Application Serial No. 75/497,033. Copies of such applications are attached for your easy reference. (All such statutory and common law marks and trade dress discussed in this and the previous paragraph are collectively referred to as the "Heart Mark".)

Consequently, our client is quite concerned that adoption of such identical trademarks and trade dress in your Vermont Teddy Bear Company departments appropriates the intellectual property of our client and constitutes trademark infringement and unfair competition, being violative of property rights which our client has established with considerable effort and expense.

Under the circumstances, we must request that you immediately cease and desist from any further manufacture, use, distribution, display or sale of any products or services bearing or used in connection with the Heart Mark or any other mark confusingly similar thereto.

STLD01-677803VI

SENT BY:

10-27-98 : 5:19PM :BLACK*SANDERS*PEPE

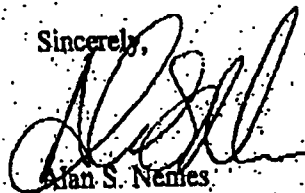
610 896 7216:# 4/14

BLACKWELL SANDERS PEPPER MARTIN

Mr. Thomas Vellios
October 27, 1998
Our Ref. 13940-58576
Page 3

Your immediate compliance with the foregoing and acknowledgment of same by signing this letter and returning it within 10 days will permit this matter to be resolved. We thank you for your cooperation in this matter and trust that it can be amicably resolved in the immediate future.

Sincerely,



Alan S. Nemes

Asn:em
Enclosures

Agreed and acknowledged:

Children's Concept Inc.

By: _____
Printed: _____
Title: _____
Date: _____

STLD01-677803V1

EXHIBIT 13

UNITED STATES PATENT AND TRADEMARK OFFICE

[Home](#)[Index](#)[Search](#)[System
Alerts](#)[eBusiness
Center](#)[News &
Notices](#)[Contact Us](#)**Trademark Electronic Search System(Tess)***TESS was last updated on Thu Jul 22 04:35:57 EDT 2004*

PTO HOME	TRADEMARK	TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DIR	BOTTOM	HELP	
CURR LIST		FIRST DOC	PREV DOC						

[Logout](#) Please logout when you are done to release system resources allocated for you.[Start](#) [List At:](#) [OR](#) [Jump](#) to record: **Record 3 out of 3**[Check Status](#)*(TARR contains current status, correspondence address and attorney of record for this mark. Use the "Back" button of the Internet Browser to return to TESS)***Typed Drawing****Word Mark** **MAKE A FRIEND FOR LIFE****Goods and Services** IC 035. US 100 101 102. G & S: providing a separate area in retail stores where customers may assemble stuffed animals with the assistance of store personnel. FIRST USE: 19960826. FIRST USE IN COMMERCE: 19960826

IC 028. US 022 023 038 050. G & S: goods consisting of kits, comprised of materials and component parts with which purchasers may assemble their own stuffed animals, such as teddy bears, namely, fur, stuffing, thread and joints. FIRST USE: 19960826. FIRST USE IN COMMERCE: 19960826

Mark Drawing Code (1) TYPED DRAWING**Serial Number** 75136982**Filing Date** July 22, 1996**Current Filing Basis** 1A**Original Filing Basis** 1B**Published for Opposition** March 4, 1997**Registration Number** 2131281**Registration Date** January 20, 1998**Owner** (REGISTRANT) Vermont Teddy Bear Co., Inc., The CORPORATION NEW YORK

2236 Shelburne Road PO Box 965 Shelburne VERMONT 05482

Assignment Recorded ASSIGNMENT RECORDED
Type of Mark TRADEMARK. SERVICE MARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR).
Live/Dead Indicator LIVE

PTO HOME	TRADEMARK	TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DOC	TOP	HELP	
CURR LIST		FIRST DOC	PREV DOC						

[HOME](#) | [INDEX](#) | [SEARCH](#) | [SYSTEM ALERTS](#) | [BUSINESS CENTER](#) | [NEWS&NOTICES](#) |
[CONTACT US](#) | [PRIVACY STATEMENT](#)

EXHIBIT 14

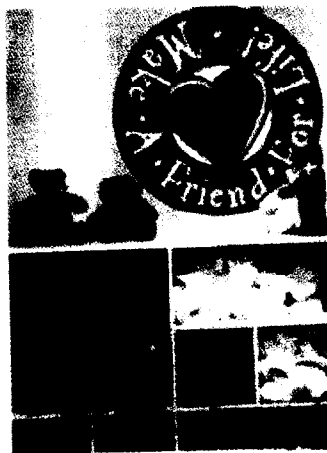
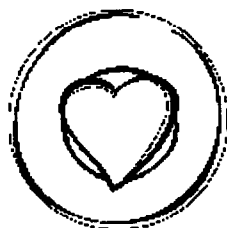


EXHIBIT 15

UNITED STATES PATENT AND TRADEMARK OFFICE

[Home](#)[Index](#)[Search](#)[System
Alerts](#)[eBusiness
Center](#)[News &
Notices](#)[Contact Us](#)**Trademark Electronic Search System(Tess)***TESS was last updated on Thu Jul 22 04:35:57 EDT 2004*[PTO HOME](#)[TRADEMARK](#)[TESS HOME](#)[NEW USER](#)[STRUCTURED](#)[FREE FORM](#)[BROWSE DOC](#)[BOTTOM](#)[HELP](#)[CURR LIST](#)[NEXT LIST](#)[FIRST DOC](#)[PREV DOC](#)[NEXT DOC](#)[LAST DOC](#)[Logout](#) Please logout when you are done to release system resources allocated for you.[Start](#) [List At:](#) [OR](#) [Jump](#) to record: **Record 24 out of 56**[Check Status](#)*(TARR contains current status, correspondence address and attorney of record for this mark. Use the "Back" button of the Internet Browser to return to TESS)***Goods and
Services**

IC 028. US 022 023 038 050. G & S: plush toys, namely, stuffed animals and costumes therefor. FIRST USE: 19970800. FIRST USE IN COMMERCE: 19970800

IC 042. US 100 101. G & S: retail store services, namely, providing a department in a retail store where customers can assemble a stuffed animal. FIRST USE: 19971000. FIRST USE IN COMMERCE: 19971000

**Mark Drawing
Code**

(2) DESIGN ONLY

**Design Search
Code**

021101 260120

Serial Number

75896781

Filing Date

January 14, 2000

**Current Filing
Basis**

1A

**Original Filing
Basis**

1B

**Published for
Opposition**

September 5, 2000

**Registration
Number**

2568118

Registration Date May 7, 2002
Owner (REGISTRANT) VERMONT TEDDY BEAR COMPANY, INC., THE CORPORATION NEW YORK 6655 Shelburne Road, P.O. Box 965 Shelburne VERMONT 05482
Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record H JAY SPIEGEL
Type of Mark TRADEMARK. SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

PTO HOME	TRADEMARK	TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DOC	TOP	HELP	
CURR LIST	NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC				

[HOME](#) | [INDEX](#) | [SEARCH](#) | [SYSTEM ALERTS](#) | [BUSINESS CENTER](#) | [NEWS&NOTICES](#) |
[CONTACT US](#) | [PRIVACY STATEMENT](#)

EXHIBIT 16

Product Code	MAFFL Product	July-Sept 1996 Q197	Oct - Dec 1996 Q397	Jan - Mar 1997 Q397	Apr - June 1997 Q497	July-Sept 1997 Q198	Oct - Dec 1997 Q398	Jan - Mar 1998 Q398	Apr - June 1998 Q498
ABFP13018	Floppy, MAFFL, Buttercream Teddy, MAFFL Box, Caramel					2484	654	125	426
BK0013067	(Make-a-Friend Teddy)		449	106	23	12	35	20	40
	Theo, MAFFL Box, Caramel								
BK0013078	(Make-a-Friend Theo)		418	122	10	8	30	30	13
ABFP12060	Fleece MAFFL - Purple					374	109	49	87
ABFP12058	Fleece MAFFL - Pink					330	113	43	78
ABFP12057	Fleece MAFFL - Turquoise					373	123	108	87
		323, only August and Sept, no July	1077						
	Blond Floppy MAFFL ?								

Product IDs from BK0013067 to BK0013078 ORDERED from 07-01-96 to 06-30-97
Page 1 Printed 12:34:02pm 22 Jul 2004

Quantity	Product.with.name.....	St.	Ext.price
117		CL	0.00
1		XD	0.00
7		CL	252.00
125	BK0013067 13" Teddy MAFFL		252.00
132		CL	0.00
1		XX	0.00
11		CL	360.00
144	BK0013078 13" Theo MAFFL		360.00
269			612.00

Press Q to exit, any other key to continue ?

07/22/04 12:36:06 PM HOSTACCESS - catman

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of:

Trademark Application Serial No.

75/434,462

Filed

February 13, 1998

For the Mark

"BEAR DESIGN"

Published in the Official Gazette

on July 13, 1999 at TM 77

THE VERMONT TEDDY BEAR COMPANY,)
INC.,)

Opposer,)

v.)

Opposition No. 91115198

BUILD-A-BEAR WORKSHOP, INC.,)

Applicant.)

DECLARATION OF ROBERT PATRICK BURNS

The undersigned, Robert Patrick Burns, makes the following declaration:

(1) That I reside at 140 Loop Road, Georgetown, Maine 04548;

(2) That I was Chief Executive Officer (CEO) of The Vermont Teddy Bear Company, Inc. (VTB) from August 1, 1995 through October 8, 1997;

(3) That after my tenure as CEO of VTB concluded, I continued to serve as a paid consultant to VTB through October 31, 1999;

(4) That I served as a member of the Board of Directors of VTB from August 1, 1995 through July 8, 1999;

(5) That during the course of my tenure as CEO of VTB, I came up with the concept of "Make A Friend For Life" (MAFFL), in 1996;

(6) That the concept included both creation of a station at VTB's factory store in Shelburne, Vermont, beginning in 1996, and nationwide marketing of a kit using catalogs, beginning in 1996, initially, and, later, using VTB's web site;

(7) That attached to this Declaration is a document identified by Bates Nos. VTB 00021-25, dated in May, 1996, that provides evidence concerning the date of conception of this marketing idea;

(8) That also attached to this Declaration is a copy of a blueprint dated September 6, 1996, that is included in MAFFL kits, and that evidences the general time period during which the idea for MAFFL kits was created;

(9) That my concept for MAFFL revolved around the notion of bringing a stuffed teddy bear "to life" through the placement of a heart within its chest during assembly, and that part of the inspiration for this idea was the story in which the puppet Pinocchio was brought to life; VTB considered the step of placement of the heart to be the most important step in the process of bringing a teddy bear to life;

(10) That during my tenure as CEO of VTB, in marketing the MAFFL concept, it was made clear to VTB's customers that the place to go to put together a teddy bear and bring it to life by placing a heart in its chest was initially at the station provided for that purpose at VTB's factory store in Shelburne, Vermont, and, additionally, subsequently, through purchase of a MAFFL kit from VTB's catalog, and later via the Internet and at bear assembly stations in retail outlets licensed by VTB, namely, Zany Brainy stores;

(11) That by the time VTB's Holiday 1996 Catalog was mailed out throughout the United States beginning in September, 1996, MAFFL kits to be sold via that catalog had been created including the blueprint described above as part of the kit;

(12) That the MAFFL kits initially included a brass heart with a hole through it, which had initially been manufactured for VTB for use as a pendant on a rope sold with VTB's TEDDY AND THEO bears;

(13) That VTB used the brass hearts described above in the MAFFL kits until VTB ran out of them, whereupon VTB substituted a red felt heart;


(14) That at no time did MAFFL kits include a chain, rope or anything else intended to be used to support the heart as a pendant; rather, the MAFFL kits were always designed with the instruction on the enclosed blueprint "When you're finished stuffing, it's time to place the heart in. Carefully place the heart exactly where you think it belongs.";

(15) That I can verify, from personal knowledge, that from (a) the time VTB began offering its customers a station at its factory store beginning in 1996 where customers could assemble a stuffed teddy bear including, the most important step, that of placement of the heart within the chest of the bear to bring it to life, to (b) the date on which my paid consultancy with VTB concluded, October 31, 1999, VTB continuously used the concept of placement of a heart within the chest of a bear as a Trademark and Service Mark, associating the heart in the chest of the bear with its source, VTB.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his own knowledge are true; and all statements made on information and belief are believed to be true.

Respectfully submitted,


ROBERT PATRICK BURNS


DATE

VTB 00021

KIT for... (ISA THOMAS)

from SHADOW PROD. 5 PAGES

Vermont Teddy Bear Company
Make a Friend For Life
Instruction Book Copy Ideas
5/8/96; revised 5/20/96; 5/21/96; 5/23/96

How to Make a Friend ... For LifeKit Contents

Your kit should contain the following:

- 1 teddy bear head
- 1 teddy bear body
- 2 teddy bear arms
- 2 teddy bear legs
- 1 teddy bear heart
- 1 stuffing packet full of dreams, love and 100% polyester stuffing for the teddy bear's head, body, arms and legs.
- 1 pipe T-joint
- 5 joint pins (these look like big thumb tacks!)
- 8 joint washers (these look like, well, washers)
- Heavy-duty thread
- 1 official teddy bear birth certificate.

You Will Need:

- A large sewing needle
- A wooden spoon
- One (1) grownup (Additional grownups optional)

Friendship

Friendship is a magical thing. No one knows quite how or why they do it, but when you become friends, something extraordinary happens!

Giggles and secrets and whispers and smiles
Walks and talks that go on for miles
Running and jumping and make-believe games
Laughter and horseplay and silly nicknames!

All these things suddenly, magically appear when you make a friend.

So what's making a friend all about, anyway? Well, it's not like when you make a cake, a lunch, a mess, amends or even an appointment! These are all things you can do with a friend,

but making a friend, first and foremost, is work that's also fun.

Inside this package is something magical, because you're actually going to make your own teddy bear. And when you're finished, you can make friends with the friend you've just made!

Very Important! First, the LAST thing you want to do is stuff your bear's head first. Because then your bear's liable to start offering advice on how to put a bear together, and they often get it all wrong. Bears can be silly indeed, and there's nothing sillier than a bear who's told you that the arms go where the legs go just so your teddy bear can walk on its hands!

The most important thing you need for regular friend-building is a smile. But the most important thing you'll need to build THIS kind of friend is a wooden spoon! So get your spoon ready and let's begin!

1. The Legs

First we'll fill your bear's legs with just the right amount of spring. Legs are very important to a bear, as they're used for jumping, leap-frogging, cavorting, skipping, lumbering, roaming and climbing. Your bear is going to rely on his or her legs pretty heavily indeed! Too little stuffing and your bear will just mope slowly along; too much and your bear will leap too high and perhaps begin to think it's a bird!

Remove the stuffing from the packet down to the line that reads, "Springs for Bouncing and Stuff." Divide it into two equal parts. Next, using your finger to probe around, find the hole near the top of each leg (the top is the end opposite the paw pad). Don't worry if it takes a moment or two to find the hole--it's there! Now, fill your bear's legs with stuffing. You can use the handle of your wooden spoon to help you push the stuffing all the way down to the tip of your bear's toes. Now, simply do the same with the other leg.

2. The Arms

A bear's arms do just as many things as a bear's feet! A bear's arms are for honey-eating, fly-swatting, jumping-jacking, lemonade-drinking, paw-clapping and many other things; but perhaps the most important thing a bear's arms are for is best friend-hugging.

The next line on your packet will read, "Lifetime Supply of Hugs." Take out the stuffing down to this line, and divide the stuffing in two. Just as you did with the legs, use your finger to find the hole at the top of each arm, and again, don't worry if it takes a little while to find it. Next, fill the arms with stuffing, thinking about just how you like your hugs--soft or firm--and use your spoon handle to gently push the stuffing all the way to the end of your bear's paw. Do the same with the other arm.

3. The Head

Dreams are what lead your heart down the road called the Future. Your bear's head--and your head, too--is a special factory where dreams are made. So if you can fill your bear's head with

Just the right dreams, you can be sure you and your bear will have a lifetime of wonderful fun and great adventures together.

The next line on your packet is "Dreams." Remove the stuffing down to this line and use it to gently fill your bear's head, and again, use the handle of your wooden spoon to make sure the stuffing reaches all the parts of your bear's head, especially both ears and the nose. CAUTION: There are two places where a teddy bear is most ticklish, and the nose is one of them, so take care! And don't be surprised if you hear your bear giggle.

Don't stuff the body just yet!

Putting Your Bear Together

Here's where a grownup finally comes in handy!

4. This part only looks complicated, but really, it's easy! First, have your bag of joints on hand. A teddy bear likes to be able to do fun things with his or her arms, such as swing them all the way around in a big circle just for the fun of it. So that's why a teddy bear needs joints. There are three holes at the top of your bear's arm. One is the large one you already put the stuffing through. There are two other holes near the stuffing hole, one above it and one below it. Don't worry if you don't find these right away, as they are quite small. When you've found them, push the base of the joint pin (also known as the head of the oversized thumb tack!) into the stuffing hole so that it sits just under the fur, with the pin pointed outward. Now, pull the lower hole up and slide it onto the skinny part of the pin, then pull the upper hole over the pin as well. Push them both down snugly. Do the same with the other arm. Don't attach them to the body just yet.

5. Earlier, we mentioned a bunch of things teddy bears like to do with their legs; well, to do all those fun things, teddy bears need leg joints for maximum flexibility. (On occasion, a teddy bear's even been known to do a full split; just to show off.) So, next, we'll put in your teddy bear's leg joints. Now, if you got through the arms, the legs are a cinch, because all you have to do is the exact same thing.

6. Now, even though it looks as though teddy bears don't have necks, they most certainly do; teddy bear necks are just very small and refined. We'll build your teddy bear's neck next. Find the stuffing hole in the opening where a neck would be. Again, by conducting a little finger-search, you will find smaller holes on either side of the stuffing hole. Only this time, you'll find three of them, not two. Push the joint pin into the stuffing hole and pull the other holes over it, one at a time.

Warning! Point of no return! Read the following section completely before starting to attach the joints. Once the joints are on, they're on for good!

7. Now, let's put your teddy bear together! First, find your bear's butt tag. It's called a butt tag, quite simply, because it's on your bear's butt. It's there to help your teddy bear always know which way is forward, or in other words, to know if he or she is coming or going. Sit

VTB 00024

your bear's body down in front of you, with the butt tag facing you. Now, the bear's right leg will go on the same side where your right leg is, just to the right of the butt tag. Make sure the bear's toe is pointed forward. Find the hole in the body, to the right of the butt tag where the right leg will connect. Now, push the joint pin in the right leg through the hole in the right side of the body. Take a washer in your other hand, and from the inside of your bear's body, push the washer all the way down onto the pin. Now, you've probably been wondering all along what in the world the pipe t-joint is for. Well, it's in the world for the purpose of helping you push that joint and that washer tight together!

Do the exact same thing with the left leg, then the arms, making sure the right arm is on the right side and the left arm is on the left side. Otherwise, your bear will not only have an arm on backwards, but if he or she's left-handed, your bear would be left-handed on the right side, which wouldn't make any sense at all!

8. Now, let's put your bear's head on. One hidden talent of teddy bears is that they can turn their heads all the way around in a circle! So it's important to put your bear's head on just right so that he or she doesn't get a stiff neck when he or she is turning around to see what you're doing. Poke a hole in the seam junction at the top of the teddy bear's body. Push the head pin through and as you did with the arms and legs, push the washer all the way down onto the pin, using the t-joint for that extra push.

9. Now, let's fill the body with dreams and love! Love is the gift you're giving to your bear, and it's a gift your bear will give back to you, and the more you give, the more you'll get back. As you fill your bear's heart with love, think of how you and your teddy bear will be friends with each other forever!

Reach very carefully into the last part of the stuffing packet, to the line labelled "Love." Here is the most fragile part of all. As you did before with the arms and legs, gently stuff your teddy bear's body, using the wooden spoon to make sure the stuffing gives your bear a round, jolly, bear-like belly! Take care to work the stuffing into the neck and all around the arm and leg joints. CAUTION: The other place your bear is most ticklish is in the ribs, so be careful or your bear might start rolling around on the floor giggling.

10. Now, the most important part of all: Your bear's heart. This is what will truly make your teddy bear your friend. A heart is the greatest gift of all because you can use it to give or receive love. So carefully, very carefully, place your teddy bear's heart right where you want it in your bear's proud little chest.

11. Finally, it's time to sew your bear up so that all the good things you've put inside stay where they belong, and so that ...

Dreams work right
And the springs are tight
And the arms can flail
And the heart won't fail

You can use a variety of stitches. In the illustration are a couple of good ones.

All finished? Congratulations! You've just made a friend! Now, it's time to make friends with the friend you've made! So, first of all, introduce yourself! Your bear may have a lot of questions for you. Your bear's likely to be very grateful to you for putting him or her together and bringing him or her to life. But your bear is very new to the world and so will need a lot of help to learn about all sorts of things like who your parents are, who your other friends are, what you like to do for fun and so on. You may want to introduce your bear to your toys.

Here's a checklist to help you decide what to do on your bear's first day in the world.

1. Fill in your bear's birth certificate with the exact time that last stitch was sewn, because that's the exact time of your bear's birth!
2. Your bear's in his or her birthday suit, so have a birthday party for your bear and remember the date for next year!
3. Decide whether your bear is a girl bear or a boy bear or just a bear bear, and name your bear! Hint: You might just want to ask your bear what his or her name is.

Friends for Life

There's one thing more: You've done a wonderful job putting your bear together, but he or she is still just a bear. The magic of friendship is what makes your bear come to life and makes your teddy bear truly yours. And to seal your friendship for life, here's a list of things that transform two everyday individuals magically into friends.

"Friends for Life" Code:

- Friends are considerate and fair to each other.
- Friends don't fight, and if they do, they make up.
- Friends cheer each other up when the other is low.
- Friends don't say mean things about each other (or anyone else, for that matter!)
- Friends think of the other person first.
- Friends always listen.
- Friends can disagree, as long as they remain friends.
- Friends trust each other.
- Friends share, whether it's feelings and dreams and malted milk balls, or the stuff you don't like but have to finish anyway, like lima beans, broccoli and homework.

Recite this code to your bear, and make sure he or she hears you! Now, put your ear to your bear's heart, and if you listen closely, very closely, you just might hear it beating. Congratulations! You've made a friend for life.

Step 1

Open the stuffing packet and divide it into four equal groups. These will be used to fill the arms, legs, head, and body. You'll want to start with the arms, then do the legs and the head. Hold off doing the body until after the pieces are attached to it. You may find the handle of a wooden spoon is useful for pushing the stuffing to the bottom of the arms and legs.

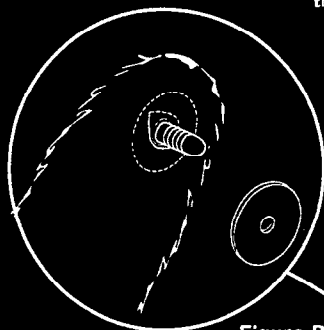


Figure B

Step 3**Attach the arms and legs to your Bear.**

Begin with the legs. Find the two small holes above and below the opening you used to stuff the leg. Place the joint peg inside the large opening with the peg sticking out. Next take the bottom small hole and place it over the peg, then take the top small hole and place it over the peg. Do this for the other leg and for both arms (See figure B).

Finally place the body in front of you with the butt tag at the bottom facing you. Find the opening in the body to correspond with the appropriate limb, making sure the limb faces forward when the butt tag is in the back. Place the peg on the limb through the hole, then press the washer over the peg from the inside of the body. Be sure to push it down tightly. This is where the plumbers T comes in handy. Use it to push the washer on completely, but be careful, once the washer is on it is permanent, so be sure you have the appropriate hole for the limb. Repeat this process for all the limbs.

Step 5**Congratulations! You've made a friend for life.**

Be sure to fill out your bear's birth certificate with the exact time of that last stitch, because that's the time of his birth. Now it's time to make friends with your bear. So first of all introduce yourself. Then you two can begin all your adventures.

Tools You'll Need:

A Wooden Spoon

A Large Sewing Needle

Contents of Kit:

(1) Furry Head	(5) Joint Pins <small>(they look like big thumb tacs)</small>
(1) Furry Body	(5) Washers
(2) Furry Arms	(1) Plumbers T
(2) Furry Legs	(1) Bag of Stuffing
(1) Brass Heart	Heavy Nylon Thread

Step 2**Attach your Bear's head.**

If you look closely at the opening where you filled the head you will find it has three small holes near the opening you used to stuff it. Place the joint peg inside the large opening so the peg is sticking out, then place the two side small holes over the peg. Next place the back hole over the peg. The head attaches to the top of the body at the juncture of the seams. Place the peg through the hole and press a washer from the inside. The t-joint supplied is particularly useful for making sure the head is on tight. (See figure A).

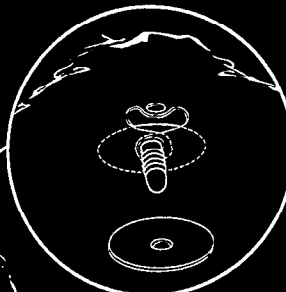


Figure A

Step 4**Stuff and seal your bear's body.**

Now that you have all the limbs and the head attached it's time to finish up. You'll need the remainder of the stuffing from step one. Fill the body of your bear to just the right firmness, making sure to fill around his neck and around all the arm and leg joints. In addition make sure you make his tummy jolly and round. When you're finished stuffing, it's time to place the heart in. Carefully place the heart exactly where you think it belongs.

Finally it's time to sew up his back. A nice zig-zag stitch will work wonderfully. (See figure C)

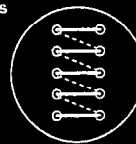


Figure C



Make A Friend For Life™

The Great American Teddy Bear Company™
2236 Shelburne Road
Shelburne, Vermont 05482

Scale = N.T.S.

09/06/1996

Drawn By: Teddy

1 of 1

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of:

Trademark Application Serial No.

75/434,462

Filed

February 13, 1998

For the Mark

"BEAR DESIGN"

Published in the Official Gazette

on July 13, 1999 at TM 77

THE VERMONT TEDDY BEAR COMPANY,)

INC.,)

Opposer,)

v.)

Opposition No. 91115198

BUILD-A-BEAR WORKSHOP, INC.,)

Applicant.)

DECLARATION OF ELISABETH B. ROBERT

The undersigned, Elisabeth B. Robert, makes the following declaration:

(1) That I am President and Chief Executive Officer (CEO) of The Vermont Teddy Bear Company, Inc. (VTB), having held those titles since October 8, 1997;

(2) That I first became employed with VTB in September, 1995, my first title at VTB being Chief Financial Officer (CFO);

(3) That I have been continuously employed at VTB since before VTB's "MAKE A FRIEND FOR LIFE" (MAFFL) concept was conceived and to date;

(4) That VTB's MAFFL concept was conceived in the Spring of 1996 by Robert Patrick Burns who was VTB's CEO at that time;

(5) That after Mr. Burns conceived the MAFFL concept, authority for its implementation was initially delegated to other VTB employees including myself, Robert Delsandro, and Kathleen Straube, and later to Courtney Griesser and Catherine Camardo, among others. That VTB employed

the services of Shadow Productions to create instruction book copy ideas for VTB concerning the MAFFL concept as evidenced by the document identified by Bates Nos. VTB 00021-25 and dated in May, 1996. That in keeping with VTB's instructions that placing the heart in the chest of the bear was the most important step in the MAFFL process, Shadow Productions depicted it as such in Instruction 10 (Bates No. VTB 00024 reading as follows: "Now, the most important part of all. Your bear's heart. This is what will truly make your teddy bear your friend. A heart is the greatest gift of all because you can use it to give or receive love. So carefully, very carefully, place your teddy bear's heart right where you want it in your bear's proud little chest.");

(6) That on or about August 26, 1996, VTB opened a station at its factory store in Shelburne, Vermont, where VTB's customers could assemble a teddy bear including VTB's Trademark and Service Mark placement of the teddy bear's heart in its chest which mark VTB adopted and claimed as its mark when that station opened. That, in this regard, Exhibit 13 to VTB's response to BABW's Motion for Summary Judgment is a copy of a print-out from the web site of the U.S. Patent and Trademark Office of VTB's Certificate of Registration for MAFFL identifying the following services: "providing a separate area in retail stores where customers may assemble stuffed animals with the assistance of store personnel" and stating the date of first use as August 26, 1996;

(7) That around the same time, VTB extended the MAFFL concept to kits including a blueprint bearing instructions for assembly of a teddy bear, with the kit including all of the component parts necessary to assemble the bear including, initially, a brass heart with a hole in it, which the blueprint instructions instructed the purchaser to insert into the chest of the bear before the chest was sewn closed, VTB's Trademark. That these goods are identified as well in Exhibit 13. That by January, 1997, a sign hung in VTB's factory store identifying its MAFFL station - see

photograph identified as Exhibit 14 - depicting a sign with a ring and a heart. That Exhibit 15 consists of a print-out from the web site of the U.S. Patent and Trademark Office of VTB's Certificate of Registration for the heart in the ring mark and indicating a date of first use of January 19, 1997;

(8) That the initial hearts used in MAFFL kits had a hole in them because they were also used in sales of TEDDY AND THEO teddy bears which included, as an accessory, a necklace consisting of a rope on which was hung, as a pendant, the heart, using the hole in the heart to support it on the rope;

(9) That at no time did MAFFL kits sold by VTB include such a rope or any other necklace for the heart. Rather, at all times, the instructions accompanying the MAFFL kit instructed the purchaser to place the heart into the chest of the teddy bear;

(10) That once VTB's inventory of brass hearts was exhausted, VTB began using red felt hearts in their place in the MAFFL kits, and at the MAFFL stations at VTB's headquarters and elsewhere;

(11) That in September, 1996, VTB began mailing its Holiday 1996 Catalog which included, on its back cover, a prominent advertisement of its MAFFL kits including prominent identification of a heart and its placement in the chest of a stuffed teddy bear. That by October, 1996, 1 million such catalogs had been produced by VTB's printer and virtually all of them had been mailed by the end of October, 1996;

(12) That referring to Exhibit 16, from August, 1996 through June 30, 1998, VTB sold 6,969 MAFFL bears at its factory store, each of which had a heart placed into its chest by the customer before the chest was closed;

(13) That referring to Exhibit 16, from August, 1996 through June 30, 1998, VTB sold 1,585 MAFFL kits, each of which included a heart and instructions to place the heart within the chest of the stuffed teddy bear when it was assembled;

(14) That the MAFFL station in VTB's factory store has been in continuous use since its establishment in 1996 and to date, and during that entire period of time, an important aspect of assembly of a teddy bear constitutes placement of a heart within the chest of the bear, the bears currently having labels stating, among other things, "FRIEND FOR LIFE" and identifying VTB as their source;

(15) That from July, 1996 to October, 1998, VTB provided a MAFFL station including, as an important step, placement of a heart within the chest of a stuffed teddy bear in their North Conway, New Hampshire store;

(16) That from August, 1997 to August, 1998, VTB provided a MAFFL station including, as an important step, placement of a heart within the chest of a stuffed teddy bear in their Freeport, Maine store;

(17) That beginning in 1998 and through November, 2000, VTB licensed Zany Brainy the right to provide MAFFL stations and Zany Brainy did so in numerous stores in such locations as New Jersey, Maryland, Pennsylvania, Georgia, Alabama, North Carolina, Illinois, Minnesota and California, which stations permitted a customer to place a heart within the chest of a stuffed teddy bear, and Zany Brainy's stations which used VTB's Trademark and Service Mark placement of the heart within the chest of a stuffed teddy bear did so identically to all such earlier uses from the first use in 1996 and identically to all subsequent uses to date;

(18) That since 1998, through the present, VTB has prominently advertised, on its web site at WWW.VTBEAR.COM, its MAFFL services and the ability of its customers to visit its factory store and assemble and purchase a stuffed teddy bear including placement of a heart inside the chest of the bear during assembly;

(19) That attached to this Declaration are photographs showing a VTB teddy bear with a heart in its chest as assembled at VTB's MAFFL station at its factory store in Shelburne, Vermont. That those photographs depict the manner of use of the heart as a Trademark as it has been used by VTB since the MAFFL station opened at VTB's factory store in 1996.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of her own knowledge are true; and all statements made on information and belief are believed to be true.

Respectfully submitted,

Elisabeth B. Robert
ELISABETH B. ROBERT

7-23-04
DATE

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of:

Trademark Application Serial No.

75/434,462

Filed

February 13, 1998

For the Mark

"BEAR DESIGN"

Published in the Official Gazette

on July 13, 1999 at TM 77

THE VERMONT TEDDY BEAR COMPANY,)
INC.,)

Opposer,)

v.)

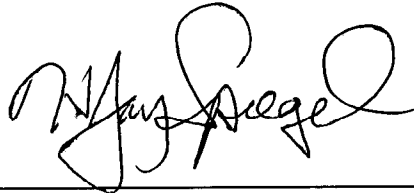
Opposition No. 91115198

BUILD-A-BEAR WORKSHOP, INC.,)

Applicant.)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the foregoing OPPOSER'S RESPONSE TO APPLICANT'S MOTION FOR SUMMARY JUDGMENT with EXHIBITS 1-16, DECLARATION OF ROBERT PATRICK BURNS and DECLARATION OF ELISABETH B. ROBERT were forwarded this day, July 23, 2004, via Federal Express, billed to sender, to Michelle Alvey, Esquire, Counsel for Applicant, BLACKWELL SANDERS PEPER MARTIN LLP, 720 Olive Street, Suite 2400, St. Louis, Missouri 63101.



H. JAY SPIEGEL, Attorney for Opposer
THE VERMONT TEDDY BEAR COMPANY, INC.

Dated: July 23, 2004

H. JAY SPIEGEL & ASSOCIATES
P.O. Box 11
Mount Vernon, Virginia 22121
(703) 619-0101 - Phone
(703) 619-0110 - Facsimile